



Guam

Minors' Privacy Toolkit

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 Guam? Under Guam law, a minor is a person under eighteen years of age. 19 Guam Code Ann. § 1101; 19 Guam Code Ann. § 5102(c).

2

How does emancipation work in Guam? Under Guam law, emancipation can only be granted through a petition by the parent, guardian, person acting in loco parentis, the Division of Social Services, or any other person having a legitimate interest in the matter. 19 Guam Code Ann. §§ 4301-4313. A minor cannot file their own case but must rely on one of the above people to file.

3

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

Reproductive health	<p>Except in the case of a medical emergency, if a pregnant person is less than eighteen years of age and not emancipated, or if they have been adjudged an incompetent person, no person shall perform an abortion upon them unless they first obtain their written consent and the consent of one of their parents or a legal guardian. 19 Guam Code Ann. § 4A102.</p> <p>If a minor signs a written statement that they are a victim of sexual abuse, neglect, or physical abuse by either of their parents or legal guardians, then the attending physician shall obtain the written consent from an adult sibling, stepparent, or grandparent specified by the minor. 19 Guam Code Ann. § 4A103.</p> <p style="text-align: right;"><i>Continued on next page</i></p>
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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.

Reproductive health, cont.	<p>At any age: Consent shall not be required if a medical emergency exists and there is insufficient time to obtain required consent; or if the minor petitions the Superior Court of Guam for a waiver of the consent requirement. 19 Guam Code Ann. § 4A104, 19 Guam Code Ann. § 4A107.</p> <p>The consent for medical care by a pregnant minor, or by a minor afflicted with or concerned with being afflicted with a sexually transmitted disease, the HIV virus, or AIDS shall be binding as if the minor had achieved their majority. 19 Guam Code Ann. § 1111.</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>
General medical	The Guam Code explicitly excludes surgery and abortion from medical care a minor can consent to. 19 Guam Code Ann. § 1111.
Mental health and chemical dependency	The consent to the provision of medical care and service by minor who professes to suffer from a substance abuse shall be valid and binding as if the minor had achieved their majority. 19 Guam Code Ann. § 1111.

4

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

5

What are the child abuse mandatory reporting obligations in Guam?

Who is a mandatory reporter of child abuse? In Guam, any person who, in the course of their employment, occupation, or professional practice, comes into contact with children shall report when they have reason to suspect on the basis of their training and experience that a child is an abused or neglected child. 19 Guam Code Ann. § 13201. Reporters include:

- Any licensed physician, dentist, intern, registered or licensed practical nurse, hospital personnel engaged in admission, examination, care, or treatment
- Christian Science practitioner, clergy, or other similar functionary
- School administrator, school teacher, school nurse, school counselor
- Social services worker
- Day care center worker or any other childcare foster worker
- Mental health professional
- Peace officer or law enforcement official

How is “child” defined for purposes of Guam’s mandatory reporting law? “Child” means “a person under the age of eighteen years.” 19 Guam Code Ann. § 13101(d).

How is “abuse” defined? “Abused or neglected child” means “a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) responsible for the child’s welfare.” 19 Guam Code Ann. § 13101(b).

When must a mandatory reporter make a report? A report must be made immediately by telephone and followed up in writing within forty-eight hours after the oral report. 19 Guam Code Ann. § 13203.

What must be reported if I am required to report child abuse? “Every report of a known or suspected child abuse should include the name of the person making the report, the name, age, and sex of the child, the present location of the child, the nature and extent of injury, and any other information, including information that led that person to suspect child abuse, that may be requested by the child protective agency receiving the report.” 19 Guam Code Ann. § 13203(c)(1). Reports of abuse or neglect should also include the name of the person(s) responsible for causing the suspected abuse or neglect; family composition; actions taken by the reporting source; and any other information which the child protective agency may, by regulation, require. 19 Guam Code Ann. § 13203(c).

To whom must I make a report when I am required to do so? Oral and written reports shall be made to Child Protective Services or to the Guam Police Department. 19 Guam Code Ann. § 13203(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.

Guam statutes allow, but do not require, medical practitioners licensed by the Guam Board of Allied Health Examiners to disclose information that would otherwise be confidential in specified situations. The statutes do not place an affirmative duty on the mental health professional to warn either potential victims or law enforcement agencies.

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? In Guam, a “crime victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a crime victim advocate.” Guam R. Evid. § 9102(b)(1).

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Guam? No. “A crime victim advocate shall not disclose as a witness or otherwise, any communication made by or with the victim, including any communication made to or in the presence of others, unless the victim consents in writing to the disclosure.” Guam R. Evid. § 9102(c)(1).

9

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

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).