



# Hawaii

## 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.<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 Hawaii?** In Hawaii, residents who are under the age of eighteen are minors. Haw. Rev. Stat. § 577-1.

2

**How does emancipation work in Hawaii?** The only way to be emancipated as a minor in Hawaii is through a valid marriage. Haw. Rev. Stat. § 577-25.

(Hawaii House Bill No. 1859, which was revised on March 21, 2018, proposes that a minor may petition the Family Court for emancipation, thereby amending Haw. Rev. Stat. § 577-25. As of March 2020, this bill has not been signed into law.)

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law
Haw. Rev. Stat. § 577-25; Haw. Rev. Stat. § 327E-3	The only right of an emancipated minor that is explicitly recognized is the right to give an advance health-care directive. Haw. Rev. Stat. § 327E-3.	Voting rights; the right to purchase, possess, or sell alcoholic beverages; the status of such persons as minors in connection with any criminal law; a family court's jurisdiction over the minor.	<i>Beckley v. Brown</i> , 20 Haw. 596, 597 (1911).

<sup>1</sup> 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.

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

<p><b>Reproductive health</b></p>	<p><b>Age fourteen or older:</b> A minor who is at least fourteen years old may consent to receive medical services related to family planning, including a pregnancy or venereal disease. Haw. Rev. Stat. §§ 577A-1, 577A-2. The minor's treating physician or registered nurse may inform the spouse, parent, custodian, or guardian of any minor patient about the provision of family planning-related medical care to the minor or disclose any information about such care and services after consulting with the minor. Haw. Rev. Stat. § 577A-3.</p> <p><b>At any age:</b> A minor of any age may consent to have an abortion in Hawaii and need not inform their parents. See Haw. Rev. Stat. § 453-16.</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><b>General medical</b></p>	<p><b>At any age:</b> Absent an emergency, unemancipated minors usually cannot consent to medical treatment in Hawaii, aside from treatment in the above and below categories related to family planning, or mental health and chemical dependency. Haw. Rev. Stat. § 577A-1.</p> <p>However, "minors without support" in Hawaii may consent to receive "primary medical care services." Haw. Rev. Stat. § 577D-1. "Primary medical care and services" includes the following: "screening, counseling, immunizations, medication, and treatment of illnesses and medical conditions customarily provided by licensed health care practitioners in an outpatient setting. [It] does not include invasive care, such as surgery, that goes beyond standard injections, laceration care, or treatment of simple abscesses." Haw. Rev. Stat. § 577D-1. A "minor without support" is a child who is "at least fourteen years of age but less than eighteen years of age who is not under the care, supervision, or control of a parent, custodian, or legal guardian" but is also not emancipated. Haw. Rev. Stat. § 577D-1.</p>
<p><b>Mental health and chemical dependency</b></p>	<p><b>Age fourteen or older:</b> A minor who is fourteen years of age or older may consent to mental health treatment or counseling services provided by a licensed mental health professional if, in the opinion of the mental health professional, the minor is mature enough to participate in the treatment or counseling services. The consent of the minor's parent or legal guardian is required to prescribe medication to the minor or to place the minor into an out-of-home or residential treatment program. Haw. Rev. Stat. § 577-29.</p> <p><b>At any age:</b> A minor of any age may consent to receive counseling services for alcohol or drug abuse. Haw. Rev. Stat. § 577-26. However, the counselor may inform the spouse, parent, custodian, or guardian of any minor who requests, is referred for, or received counseling services relating to alcohol or drug abuse. Haw. Rev. Stat. § 577-26(a).</p>

## 4

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

## 5

**What are the child abuse mandatory reporting obligations in Hawaii?**

**Who is a mandatory reporter of child abuse?** In Hawaii, there is a long list of professionals who are mandatory reporters. See Haw. Rev. Stat. § 350-1.1 for a full list. These reporters include:

- Licensed or registered health professionals, including physicians, psychologists, dentists, nurses, surgeons, and pharmacists
- Employees or officers of any public or private school
- Law enforcement officers
- Childcare providers
- Employees of any agency providing recreational or sports activities

**How is “child” defined for purposes of Hawaii’s mandatory reporting law?** “Child” is defined for purposes of the mandatory reporting law as “a person who is born alive and is less than eighteen years of age.” Haw. Rev. Stat. § 350-1.

**How is “abuse” defined?** “Child abuse or neglect” is defined by Haw. Rev. Stat. § 350-1 as “the acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child’s care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed.”

The “acts or omissions” that must be reported pursuant to Haw. Rev. Stat. § 350-1 include, but are not limited to:

- (A) When the child exhibits evidence of:
- Substantial or multiple skin bruising or other internal bleeding
  - Skin injury causing substantial bleeding
  - Malnutrition
  - Failure to thrive
  - Burn or burns
  - Poisoning
  - Bone fracture
  - Subdural hematoma
  - Soft tissue swelling
  - Extreme pain

- Extreme mental distress
- Gross degradation
- Death

Such needs to be “not justifiably explained, or ... the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence.” Haw. Rev. Stat. § 350-1(1)(A).

- (B) Or when “the child has been the victim of sexual contact or conduct, including, but not limited to, sexual assault . . . , molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming or depiction; or other similar forms of sexual exploitation ...;” Haw. Rev. Stat. § 350-1(1)(B).
- (C) Or when “there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child’s ability to function;” Haw. Rev. Stat. § 350-1(1)(C).
- (D) Or when “the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;” Haw. Rev. Stat. § 350-1(1)(D).
- (E) Or when “the child is provided with dangerous, harmful, or detrimental drugs ...,” which are not provided to the child “pursuant to the direction or prescription of a practitioner ...;” Haw. Rev. Stat. § 350-1(1)(E).
- (F) Or when the child has been the victim of labor trafficking. Haw. Rev. Stat. § 350-1(1)(F).

**When must a mandatory reporter make a report?** A mandatory reporter who has “reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future” must orally report such child abuse “immediately” to Hawaii’s Department of Human Service or to a police department, under Haw. Rev. Stat. § 350-1.1(a). A mandatory reporter’s initial oral report must be followed, “as soon as possible,” by a report in writing to Hawaii’s Department of Human Service or to a police department. Haw. Rev. Stat. § 350-1.1 (c). If a police department or the Department of Public Safety is the initiating agency for the report of child abuse or neglect, then a written report shall be filed with Hawaii’s Department of Human Service for cases that the police or the Department of Public Safety take further action on. Haw. Rev. Stat. § 350-1.1 (c).

**What must be reported if I am required to report child abuse?** A mandatory reporter’s written report must contain the name and address of the abused child and the child’s parents or other persons responsible for the child’s care. Additionally, if known, the report must include the child’s age, the nature and extent of the child’s injuries, and any other information that the reporter believes might be helpful or relevant to the investigation of the child abuse or neglect. Moreover, upon demand of Hawaii’s Department of Human Service or any police department, the mandatory reporter must provide all information related to the alleged incident of child abuse or neglect, including, but not limited to, medical records and medical reports, if these were not included in the written report submitted by the reporter. Haw. Rev. Stat. §§ 350-1.1(c), (d).

**To whom must I make a report when I am required to do so?** Mandatory reporters must contact Hawaii’s Department of Human Services, Social Services Division, Child Welfare Services or to a police department. Haw. Rev. Stat. § 350-1.1.

## 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.

In Hawaii, there is no statutory or common law duty to warn or prevent harm unless a special relationship exists. However, by statutory mandate, psychologists are *permitted* to disclose otherwise privileged client communications to avoid the tort liability imposed by *Tarasoff v. Regents*, 17 Cal. 3d 425, 131 Cal. Rptr. 14, 551 P.2d 334 (1976) if a client’s communications reflect the intent to commit a criminal or tortious act that the psychologist reasonably believes is likely to result in death or substantial bodily harm.

**Note:** RULE 504.1 SUPPLEMENTAL COMMENTARY:

Subsection (d)(6), entitled “Prevention of crime or tort,” is intended to allow psychologists to make disclosures to avoid tort liability of the sort imposed by *Tarasoff v. Regents*, 17 Cal. 3d 425, 131 Cal. Rptr. 14, 551 P.2d 334 (1976) (psychotherapist’s common law duty to warn foreseeable victims of a patient the therapist knows to be dangerous and likely to harm those victims). Hawaii will likely embrace *Tarasoff*, see *Lee v. Corregedore*, 83 H. 154, 925 P.2d 324 (1996), declining to create a duty to prevent a patient’s suicide but recognizing a psychotherapist’s duty to “disclose the contents of a confidential communication where the risk to be prevented thereby is the danger of violent assault...” Hawaii added a *Tarasoff* exception to its lawyer-client privilege in 1992, rule 503(d)(2), and the present amendment extends the same protection to psychologists.

See, too, *Williams v. United States*, 711 F.Supp.2d 1195 (2010), where the Court found that under Hawaii law, the general rule is that a person does not have a duty to act affirmatively to protect another person from harm and the fact that actor realizes or should realize that action on their part is necessary for another’s aid or protection does not itself impose upon them a duty to take such action. However, the Court noted there one of the two exceptions to this general rule is when a ‘special relationship’ exists between the actor and the individual facing harm.

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.

## 7

**May domestic violence and sexual assault advocates have privileged communications with a minor survivor?** Haw. Rev. Stat. § 626-1, Rule 505.5 recognizes a “victim-counselor privilege” in Hawaii, in which a victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a victim’s counselor for the purpose of counseling or treatment of the victim for the emotional or psychological effects of sexual assault, domestic violence, or child abuse or neglect.

## 8

**Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Hawaii?** Hawaii’s victim-counselor privilege states that a “communication is ‘confidential’ if not intended to be disclosed to third

persons other than those to whom disclosure would be in furtherance of the provision of counseling or treatment services to the victim or those reasonably necessary for the transmission of the communication.” Haw. Rev. Stat. § 626-1, Rule 505.5(1). To avoid waiver of the privilege, a parent or guardian’s presence during the communication would need to be in furtherance of the provision of services or reasonably necessary for the transmission of the communication.

9

**Does Hawaii have a privilege that protects the privacy of communication between a parent and a child?** Hawaii 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).