



# Idaho

## 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).

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**Who is a “minor” in Idaho?** Under Idaho law, minors are “males” and “females” under the age of eighteen. Idaho Code Ann. § 32-101.

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**How does emancipation work in Idaho?** There is no statutory emancipation scheme in Idaho. As further detailed in the chart below, emancipation of a minor occurs if a minor is lawfully married or the circumstances indicate that the parent-child relationship has been renounced.

Emancipation statute	Minor as adult for these purposes	Relevant case law
Idaho Code Ann. § 32-101 (if married)	Competent to enter a contract, mortgage, deed of trust, bill of sale and conveyance, and sue or be sued thereon.	
Idaho Code Ann. § 18-604 (if married or in active military service)	Abortion, contraception	
Idaho Code Ann. § 66-402 (between fourteen and eighteen years old who has been married or whose parent-child relationship has been renounced)		<p>“Emancipation of a minor child by virtue of his own self-sufficiency is a factor which the trial court may properly consider in relieving a parent from his obligation of child support.”</p> <p><i>Embree v. Embree</i>, 380 P. 2d 216, 220 (Idaho Sup. Ct. 1963).</p> <p><i>But see Matter of Lane’s Estate</i>, 590 P. 2d 577 (Idaho Sup. Ct. 1979) (when witnessing a will, must be eighteen years of age).</p>

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

<p><b>Reproductive health</b></p>	<p>Abortion: Written consent of unemancipated minor's parent, guardian, or conservator required unless judge determines minor is mature and capable of giving informed consent or abortion would be in their best interests; minor certified to the attending physician that the pregnancy resulted from rape or sexual conduct with certain family members or guardian; or a medical emergency exists for the minor. Idaho Code Ann. § 18-609A.</p> <p>"Abortion" does not include "birth control." Idaho Code Ann. § 18-604.</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>"Any person, including one who is developmentally disabled and not a respondent as defined in section 66-402, Idaho Code, who comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated hospital, medical, dental, surgical or other health care, treatment or procedure is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite comprehension at the time of giving the consent." Idaho Code Ann. § 39-4503.</p> <p>"A minor fourteen (14) years of age or older who may have come into contact with any infectious, contagious, or communicable disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law ... to be reported to the local health officer.... The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease." Idaho Code Ann. § 39-3801.</p> <p>For cases of an emergency and no others can consent, see Idaho Code Ann. § 56-1015 (hospital, physician); § 16-2422(1) (voluntary facility admission - mental health treatment or medications).</p>
<p><b>Mental health and chemical dependency</b></p>	<p>Treatment of rehab for drug abuse: "A person may request treatment and rehabilitation for addiction or dependency to any drug." Idaho Code Ann. § 37-3102. If the person seeking such treatment or rehabilitation is sixteen (16) years of age or older, the fact that such person sought treatment or rehabilitation for such drug addiction or dependency, or that he is receiving such treatment or rehabilitation service, shall not be reported or disclosed to the parents or legal guardian of such person without his consent ...." Idaho Code Ann. § 37-3102.</p>

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

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 Idaho.

## What are the child abuse mandatory reporting obligations in Idaho?

**Who is a mandatory reporter of child abuse?** Under Idaho Code § 16-1605(1), mandatory reporters of child abuse are:

- Physicians, residents on a hospital staff, interns, nurses
- Coroners
- School teachers, day care personnel
- Social workers
- Other persons having reason to believe a child has been abused, abandoned, or neglected or who observe a child “being subjected to conditions or circumstances that would reasonably result in abuse, abandonment or neglect.” *Id.*

Note: Ordained ministers of religion, when in connection with confessions and confidential communications, do not need to report. Idaho Code Ann. § 16-1605(3).

**How is “child” defined for purposes of Idaho’s mandatory reporting law?** A person under the age of eighteen. See Idaho Code Ann. § 16-1605(1).

**How is “abuse” defined?** In Idaho, “abused” means “any case in which a child has been the victim of:

- a. Conduct or omission resulting in skin bruising, bleeding, malnutrition, burns, bone fracture, subdural hematoma, soft tissue swelling, failure to thrive or death, and such condition or death is not justifiably explained, or where the history given about such condition or death varies with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accident; or
- b. Sexual conduct, including rape, molestation, incest, prostitution, obscene or pornographic photographing, filming or depiction for commercial purposes, human trafficking as defined in section 18-8602, Idaho Code, or other similar forms of sexual exploitation harming or threatening the child’s health or welfare or mental injury to the child.” Idaho Code Ann. § 16-1602(1).

“Abandoned” means “the failure of the parent to maintain a normal parental relationship with his child ....” Idaho Code Ann. § 16-1602(2).

“Neglected” means a child:

- a. “Who is without proper parental care and control, or subsistence, medical or other care or control necessary for his well-being ...; or
- b. Whose parents, guardian or other custodian are unable to discharge the responsibilities to and for the child ....” or
- c. Who has been placed for care or adoption in violation of law; or
- d. Who is without proper education ....” Idaho Code Ann. § 16-1602(31).

**When must a mandatory reporter make a report?** A report must be made or caused to be made within twenty-four hours of having a reason to believe or observing the abuse, abandonment, or neglect. Idaho Code Ann. § 16-605(1).

**What must be reported if I am required to report child abuse?** The conditions or circumstances of the abuse, abandonment, or neglect must be reported. Idaho Code Ann. § 16-605(1).

**To whom must I make a report when I’m required to do so?** Reports are to be made to the “proper” law enforcement agency or department of health and welfare. When a medical professional reports,

they shall notify the person in charge of the institution or their designated delegate who shall make the necessary reports. Idaho Code Ann. § 16-1605(1).

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**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 Idaho, statute provides that licensed physicians, professional counselors, psychologists, social workers, and professional nurses (see Idaho Code Ann. § 6-1901) must disclose privileged communications without a patient’s consent if an explicit threat of serious physical harm is made to a clearly identifiable person(s) and the patient has the apparent intent and ability to carry out such a threat. Idaho Code Ann. § 6-1902.

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.

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**May domestic violence and sexual assault advocates have privileged communications with a minor survivor?** No victim-advocate privilege was found in Idaho.

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**Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Idaho?** Yes. “A child or ward has a privilege in a civil or criminal action or proceeding to which the child or ward is party to refuse to disclose and to prevent the child’s or ward’s parent, guardian or legal custodian from disclosing any confidential communication made by the child or ward to the parent, guardian or legal custodian of the child or ward.” Idaho Rules of Evidence, Rule 514.

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**Does Idaho have a privilege that protects the privacy of communication between a parent and a child?** No.

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**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).

#### Endnotes

<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.