



Minors' Privacy Toolkit

Indiana

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 Indiana? Under Indiana law, a minor is an individual who is less than eighteen years of age and who is not an emancipated minor. Ind. Code § 29-3-1-10.

2

How does emancipation work in Indiana? In Indiana, a child petitions and the court may find that the child (1) wishes to be free from parental control and protection, and does not need it; (2) has sufficient money for the child's own support; (3) understands the consequences; and (4) has an acceptable plan for independent living. Ind. Code § 31-37-19-27.

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law
Ind. Code § 31-34-20-6 Ind. Code § 31-37-19-27	Parental control; receiving child support; marriage; military enlistment; medical, psychological, psychiatric, educational, or social services; contracts; owning property	Compulsory school attendance; continuing jurisdiction of family court. Ind. Code § 31-34-20-6(c)(1), (2).	<i>Haugh, Ketcham & Co. Iron-Works v. Duncan</i> , 2 Ind. App. 264 (Ind. Sup. Ct. 1891). Military enlistment: See <i>Borders v. Noel</i> , 800 N.E. 2.d 586 (Ind. Ct. App. 2003).
Ind. Code § 34-28-3-2	Professional automobile or motorcycle racing; signing liability releases or indemnity agreements required by sanctioning entity of professional automobile or motorcycle racing events.		
Ind. Code § 31-16-6-6	Only for parental child support purposes (for this purpose, the baseline cutoff age is nineteen).		

3

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

Reproductive health	<p>Abortion: Parental consent required unless juvenile court finds that it is in the best interest of the unemancipated minor to waive the parental consent and notification requirements based on the petition of the minor or because a physician feels that compliance with the parental consent requirement “would have an adverse effect on the welfare of the pregnant minor or on her pregnancy.” Ind. Code § 16-34-2-4.</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	<p>Emancipated minors, minors at least fourteen years old and living independently, married minors, minors in the military, pregnant minors, or minors otherwise authorized to consent by statute, may consent to their own health care. Ind. Code § 16-36-1-3.</p>
Mental health and chemical dependency	<p>General medical care includes mental health. Ind. Code § 16-36-1-1.</p> <p>A minor may consent to treatment or rehabilitation for drug abuse and does not need parental consent or notification. Ind. Code § 12-23-12-1.</p>

4

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

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 Indiana.

5

What are the child abuse mandatory reporting obligations in Indiana?

Who is a mandatory reporter of child abuse? In Indiana, any person who has reason to believe that a child is a victim of child abuse or neglect has a duty to make a report. Ind. Code § 31-33-5-1.

How is “child” defined for purposes of Indiana’s mandatory reporting law? A “child” is a person who is less than eighteen years old. Ind. Code § 31-9-2-13.

How is “abuse” defined? “Child abuse or neglect” “refers to acts or omissions [described elsewhere, including in Ind. Code § 31-34] by a person against a child....” Ind. Code § 31-9-2-14.

A child is “in need of services” if “the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision;” and “the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.” Ind. Code § 31-34-1-1.

A child is also “in need of services” if “the child’s physical or mental health is seriously endangered due to injury by the act or omission of the child’s parent, guardian, or custodian;” and “the child needs care, treatment, or rehabilitation that: (A) the child is not receiving; and (B) is unlikely to be provided or accepted without the coercive intervention of the court.” Ind. Code § 31-34-1-2.

When must a mandatory reporter make a report? “A person who has a duty ... to report that a child may be a victim of child abuse or neglect shall immediately make an oral or written report.” Ind. Code § 31-33-5-4.

What must be reported if I am required to report child abuse? The department of child services (not the person making the report) is required to make a written report that includes, if known:

- Names and addresses of the child and the child’s parents, guardian, custodian, or other person responsible for the child’s care
- Child’s age and sex
- Nature and extent of child’s injuries, abuse, or neglect, including any evidence of prior injuries of the child or abuse or neglect of the child or child’s siblings
- Name of the person allegedly responsible for causing the injury, abuse, or neglect
- Source of the report, including person making report and where they can be reached
- Actions taken by reporting source
- Other information required by rule or that person making report believes might be helpful

See Ind. Code § 31-33-7-4.

To whom must I make a report when I’m required to do so? Reports must be made to the department of child services or the local law enforcement agency. Ind. Code § 31-33-5-2. If the reporting person is a member of the staff of a hospital, need to notify the individual in charge of the hospital or the designated agent of the individual in charge of the hospital. That individual will report to the department or local law enforcement agency. Ind. Code § 31-33-5-2.5.

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 Indiana, a mental health service provider must predict, or warn or take precautions to protect from a patient’s violent behavior, if the patient communicates to the mental health provider “an actual threat of physical violence or other means of harm against a reasonably identifiable victim or victims, or evidences conduct or makes statements indicating an imminent danger that the patient will use physical violence or use other means to cause serious personal injury or death to others.” Ind. Code 34-30-16-1. The affirmative duty to disclose is discharged when the mental health service provider (1) makes reasonable attempts to communicate the threat to the victim or to notify law enforcement, (2) seeks the patient’s civil commitment, (3) takes reasonable steps to prevent the patient from causing harm until appropriate law enforcement agencies take custody

of the patient, or (4) reports the threat to a physician or psychologist who has the responsibility to warn under the duty to warn statute. Ind. Code Ann. § 34-30-16-2.

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? Yes. A victim, victim advocate, or victim service provider “may not be compelled to provide testimony in any judicial, legislative, or administrative proceeding.” Ind. Code § 35-37-6-9.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege? A “confidential communication” under the victim counselor-victim privilege includes information “exchanged in the presence of a third person who facilitates or facilitated communication between a victim and a victim advocate.” Ind. Code § 35-37-6-1. The role of the parent during the communication will determine the impact of their presence on the confidentiality of the communication. Note, too, that the parent or guardian may consent to disclose information on behalf of the unemancipated minor. Ind. Code § 35-37-6-9(e), (f).

9

Does Indiana have a privilege that protects the privacy of communication between a parent and a child? No. See *Gibbs v. State*, 426 N.E. 2d 1150, 1156 (Ind. Ct. App. 1981) (affirming trial court’s decision to deny motion for asserting a parent-child privilege, noting that there was no authority to support a privilege under Indiana law).

10

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

- 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.