



Minors' Privacy Toolkit

Kansas

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.

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Who is a “minor” in Kansas? Under Kansas law, “the period of minority extends in all persons to the age of eighteen (18) years, except that every person sixteen (16) years of age or over who is or has been married shall be considered of the age of majority in all matters relating to contracts, property rights, liabilities and the capacity to sue and be sued.” Kan. Stat. Ann. § 38-101.

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How does emancipation work in Kansas? Under Kansas law, emancipation grants minors certain rights of majority. Kan. Stat. Ann. § 38-108. Minors must be at least fourteen years of age, and someone over twenty-one (a “next friend”) must file the case because a minor does not have the right to sue or file actions in court. Kan. Stat. Ann. § 38-109.

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law
Kan. Stat. Ann. §§ 38-108, 38-109, 38-110	Contracts and real and personal property; to purchase, hold, possess, control, convey, and dispose of any goods, chattels, rights, interest in lands, tenements, and effects; to make contracts and be subject to liabilities, sue and be sued, and to exercise and enjoy all rights of property and of contracts.	School attendance; work hours; voting rights; drinking age; statutory rape laws	<i>Jungjohann v. Jungjohann</i> 213 Kan. 329 (1973); <i>In re Marriage of George</i> , 26 Kan.App.2d 336 (1999); <i>Landsberg v. Board of Examiners of Wyandotte County</i> , 129 Kan. 196 (1929).

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.

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

<p>Reproductive health</p>	<p>At any age: The consent of a parent or guardian of an unmarried pregnant minor shall not be necessary in order to authorize hospital, medical and surgical care related to a pregnancy, where no parent or guardian is available. Kan. Stat. Ann. § 65-6004.</p> <p>At any age: Any physician may, with the consent of the patient, perform an sexually transmitted infection (STI) exam and prescribe for and treat any STI, including the provision of prophylactic treatment for exposure to STIs. All such exams and treatment may be performed without consent of, or notification to, the parent or guardian. However, any physician <i>may</i> inform the spouse, parent, custodian, guardian, or fiancé of the patient as to the treatment without their consent. Kan. Stat. Ann. § 65-2892. Any physician performing an HIV test may disclose the information to other health care providers, emergency services employees, corrections officers, or law enforcement employees who have been or will be placed in contact with bodily fluids of the patient. Kan. Stat. Ann. § 65-6004. A physician <i>may</i> inform the spouse or partner of the risk of exposure, but the information shall remain confidential and shall not be disclosed by the spouse or partner beyond their own testing or treatment. Kan. Stat. Ann. § 65-6004.</p> <p>At any age: Before performing abortion on a minor, a counselor must provide pregnancy information and counseling. A parent or guardian, or a person twenty-one or more years of age who is not associated with the abortion provider and who has a personal interest in the minor's well-being, shall accompany the minor and be involved in the decision-making process.</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>General medical</p>	<p>Age sixteen or older: Donating blood in a voluntary capacity without parental consent. No person sixteen or seventeen years of age shall receive compensation for any such donation without parental permission or authorization. Kan. Stat. Ann. § 65-6004.</p> <p>Age sixteen or older: May consent to the performance and furnishing of hospital, medical, or surgical treatment or procedures, where no parent or guardian is immediately available. Kan. Stat. Ann. § 65-6004.</p>
<p>Mental health and chemical dependency</p>	<p>Age fourteen or older: May make a written application without consent, for admission to a mental health treatment facility. However, the head of the treatment facility shall promptly notify the parent, legal guardian, or other person known to be interested in the care and welfare of the minor of the admittance of that child. Kan. Stat. Ann. § 59-2949.</p> <p>At any age: A physician may, with consent of the minor patient, examine and treat a minor for drug abuse, misuse, or addiction. Kan. Stat. Ann. § 2892a.</p>

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

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What are the child abuse mandatory reporting obligations in Kansas?

Who is a mandatory reporter of child abuse? In Kansas, there is a long list of mandatory reporters. (See Kan. Stat. Ann. § 38-2223 for a complete list.) Some of the most relevant reporters include:

- Persons licensed to practice the healing arts, dentistry and optometry, licensed nurses
- Licensed psychologists, licensed clinical psychotherapists, licensed social workers, licensed marriage and family therapists, licensed behavioral analysts, licensed professional counselors, and registered alcohol and drug abuse counselors
- Teachers, school administrators or other employees of an educational institution and childcare services providers
- Firefighters, emergency medical services personnel, law enforcement officers, juvenile intake and assessment workers, court services officers, community corrections officers, case managers, and mediators
- Any employee or volunteer of any organization that provides social services to pregnant teenagers

How is “child” defined for purposes of Kansas’ mandatory reporting law? A “child” is a person under eighteen years of age. Kan. Stat. Ann. § 38-2202.

How is “abuse” defined? “Physical, mental or emotional abuse” means “the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child’s health or emotional wellbeing is endangered.” Kan. Stat. Ann. § 38-2202(y). Kan. Stat. Ann. § 38-2202 defines several other relevant terms, including harm, neglect, and sexual abuse.

When must a mandatory reporter make a report? A reporter “shall report the matter promptly.” Kan. Stat. Ann. § 38-2223(a)(1).

What must be reported if I am required to report child abuse? The report may be made orally, followed by a written report if requested. Every report shall contain, if known: The names and addresses of the child and their parents or other persons responsible for their care; the location of the child if not at their residence; the child’s gender, race, and age; why the reporter suspects the child may be in need of care; if abuse, neglect, or sexual abuse is suspected, the nature and extent of the harm, including any evidence of previous harm; and any other information the reporter

believes might help establish the cause of the harm and the identity of the persons responsible for it. Kan. Stat. Ann. § 38-2223(b).

To whom must I make a report when I'm required to do so? A report must be made to the Secretary for Children and Families, except:

- When the Kansas Department of Children and Families is not open, reports “shall be made to the appropriate law enforcement agency” and
- Reports of child abuse or neglect occurring in an institution operated by the Kansas Department of Corrections “shall be made to the attorney general or the Secretary of Corrections. Reports of child abuse or neglect occurring in an institution operated by the Kansas Department for Aging and Disability Services shall be made to the appropriate law enforcement agency.” Kan. Stat. Ann. § 38-2223(c).

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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.

We found no statutes in Kansas that require or permit mental health professions to disclose confidential or privileged communications without a patient’s consent.

Kansas courts have not definitively held that mental health professionals may be held civilly liable under common law if they fail to warn an identifiable victim of an imminent physical threat. Notwithstanding the foregoing, the Kansas Supreme Court has stated that a “special relationship” may give rise to a psychotherapist duty to warn. The Court stated that a special relationship only exists when one creates a foreseeable peril, not readily discoverable, and fails to warn of the danger. Moreover, the court stated that the duty to warn does not arise where the victim is fully aware of the danger posed by the patient. *Boulanger v. Pol*, 258 Kan. 289, 900 P.2d 823 (Kan. 1995).

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.

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May domestic violence and sexual assault advocates have privileged communications with a minor survivor? There is no statutory privilege between domestic violence and sexual assault victims and advocates.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Kansas? There is no such privilege in Kansas.

9

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

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).