



Minors' Privacy Toolkit

Kentucky

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 Kentucky? Under Kentucky law, the language “child” is used for any person who has not reached their eighteenth birthday, unless otherwise provided. Ky. Rev. Stat. Ann. § 600.020.

2

How does emancipation work in Kentucky? “Emancipated minor” means any minor who is or has been married or has by court order or otherwise been freed from the care, custody, and control of their parents. Ky. Rev. Stat. Ann. § 311.732. However, the law does not establish a clear process for how a minor can become emancipated in Kentucky.

The majority of case law relating to emancipation in Kentucky is not recent. In 1964, two types of emancipation were described by the Court of Appeals. Express emancipation was defined as “when the parent and child voluntarily agree that the child, able to take care of himself, may go out from his home and make his own living, receive his own wages and spend them as he pleases,” and implied emancipation as the “parent’s acquiescence in his child’s working for others, receiving his pay therefor and spending same as he pleases, thereby impliedly consenting to same.” *Carricato v. Carricato*, 384 S.W.2d 85, 88 (Ky. 1964). The court also held that “what constitutes an emancipation is a question of law, but whether an emancipation has occurred in a particular case is a question of fact. Emancipation of a minor child is not presumed, and the burden of proof is on the party alleging that it has taken place by clear, cogent and convincing evidence either direct or circumstantial. In determining whether emancipation has occurred, the intention may be expressed either in writing or orally or it may be implied; however, it is the intention of the parent and not the child that controls.” *Id.*

More recently, case law has confirmed that while a child may be emancipated for some purposes, minority status may still attach otherwise. “Emancipation has never been held in this or any other

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.

jurisdiction that such emancipation will render an infant sui juris.” *State Auto. Ins. Co. v. Reynolds*, 32 S.W.3d 508, 510 (Ky. Ct. App. 2000).

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law
Ky. Rev. Stat. Ann. §§ 610.010 and 610.015.	Motor vehicle offense; certain criminal offenses.	Contracting capacity (<i>Bensinger</i>); “does not render an infant sui juris ... effects of emancipation in this case are limited to the relationship between the parents and the child ... emancipation does not change the child’s potential legal status as a minor.” (<i>Reynolds</i>)	<i>Bensinger’s Coexecutors v. West</i> , 255 S.W.2d 27, 28 (Ky. 1953); <i>State Auto. Ins. Co. v. Reynolds</i> , 32 S.W.3d 508, 510 (Ky. Ct. App. 2000).

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

3

Reproductive health	<p>No parental or guardian consent or notification required for a physician to “make a diagnostic examination for venereal disease, pregnancy, alcohol or other drug abuse or addiction” or to “advise, prescribe for, and treat such minor regarding venereal disease, alcohol and other drug abuse or addiction, contraception, pregnancy, or childbirth” for a minor patient. Ky. Rev. Stat. Ann. § 214.185</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>“Medical, dental, and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional’s judgment, the risk to the minor’s life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.” Ky. Rev. Stat. Ann. § 214.185.</p>
Mental health and chemical dependency	<p>“Any physician may provide outpatient mental health counseling to any child age sixteen (16) or older upon request of such child without the consent of a parent, parents, or guardian of such child.” Ky. Rev. Stat. Ann. § 214.185.</p> <p>“A minor who suffers from an alcohol and other drug abuse problem or emotional disturbance from the effects of a family member or legal guardian’s alcohol and other drug abuse problem ... may give consent to the furnishing of medical care or counseling related to the assessment or treatment of the conditions.” Ky. Rev. Stat. Ann. § 222.441.</p>
Other	<p>“Any emancipated minor or any minor who has contracted a lawful marriage or borne a child may give consent to the furnishing of hospital, medical, dental, or surgical care to his or her child or himself or herself ... consent of the parent or parents of such married or emancipated minor shall not be necessary in order to authorize such care.” Ky. Rev. Stat. Ann. § 214.185.</p>

4

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

5

What are the child abuse mandatory reporting obligations in Kentucky?

Who is a mandatory reporter of child abuse? In Kentucky, any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made Ky. Rev. Stat. Ann. § 620.030(1).

In addition to the requirement that any person shall report, there is a long list of professionals who have additional reporting responsibilities. (See Ky. Rev. Stat. Ann. § 620.030(2) for the complete list). These reporters include physicians, nurses, teachers, school personnel, social workers, childcare personnel, dentists, optometrists, emergency medical technicians, health professionals, mental health professionals, peace officers, or any organization or agency for any of the above. These professionals are required to file an additional written report, if requested. Ky. Rev. Stat. Ann. § 620.030(2).

How is “child” defined for purposes of Kentucky’s mandatory reporting law? “Child” is not defined in the Dependency, Neglect, and Abuse Chapter (Chapter 620). Earlier, a “child” is defined as any person who has not reached their eighteenth birthday, unless otherwise provided. Ky. Rev. Stat. Ann. § 600.020.

How is “abuse” defined? “Abused or neglected child” means a child whose “health or welfare is harmed or threatened with harm when: (a) Their parent, guardian, person in a position of authority or special trust, or other person exercising custodial control or supervision of the child:

- (1) Inflicts or allows to be inflicted upon the child nonaccidental physical or emotional injury;
- (2) Creates or allows to be created a risk of nonaccidental physical or emotional injury to the child;
- (3) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child;
- (4) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child;
- (5) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
- (6) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
- (7) Abandons or exploits the child;

- (8) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care;
- (9) Fails to make sufficient progress toward identified goals as set forth in a court-approved case plan to allow for the safe return of the child to the parent;
- (10) Commits or allows female genital mutilation as defined in Section 1 of this Act to be committed; or
 - (a) A person at least twenty-one years old commits or allows to be committed sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen” years old. Ky. Rev. Stat. Ann. § 600.020.

When must a mandatory reporter make a report? A mandatory reporter must make a report immediately when they know or have reasonable cause to believe that a child is dependent, neglected, abused, a victim of human trafficking, or a victim of female genital mutilation. Ky. Rev. Stat. Ann. § 620.030(1); Ky. Rev. Stat. Ann. § 620.030(3); Ky. Rev. Stat. Ann. § 620.030(4). The professionals listed in Ky. Rev. Stat. Ann. § 620.030(2) have an additional obligation to file, if requested, a written report in addition to the report required of “any person” when, regardless of the relationship of the person who caused the issue triggering the report, the report is required. These professionals shall file the additional report within forty-eight hours of the original report.

What must be reported if I am required to report child abuse? A follow-up report required of named professionals must include:

- Names and addresses of the child and their parents or other persons exercising custodial control or supervision
- Child’s age
- Nature and extent of the child’s alleged dependency, neglect, or abuse, including any previous charges of dependency, neglect, or abuse, to this child or their siblings
- Name and address of person allegedly responsible for the abuse or neglect; and
- Any additional information the reporter believes may be helpful. Ky. Rev. Stat. Ann. § 620.030(2).

To whom must I make a report when I’m required to do so? A report can be made to the local law enforcement agency, the Department of Kentucky State Police, the Commonwealth’s or county attorney, the cabinet, or its designated representative. Ky. Rev. Stat. Ann. § 620.030.

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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 Kentucky, specified mental health professionals must disclose privileged communications without a patient’s consent if “the patient has communicated to the mental health professional an actual threat of physical violence against a clearly identified or reasonably identifiable victim,

or [if] the patient has communicated to the mental health professional an actual threat of some specific violent act.” Ky. Rev. Stat. Ann. § 202A.400.

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 “client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counsel, and persons present at the direction of the counselor, including members of the clients’ family.” Kentucky Rules of Evidence, 506. Counselors under Rule 506 include sexual assault counselors at a rape crisis center, individuals who provide crisis response services on the community crisis response team, and victim advocates (excluding certain government-based advocates). Furthermore, a “human trafficking victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a trafficking victim counselor for the purpose of receiving counseling, therapy, services, information, or treatment related to human trafficking.” Ky. Rev. Stat. Ann. § 422.295.

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Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Kentucky? No. “A communication is confidential if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client’s family.” Kentucky Rules of Evidence, 506.

9

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

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).