



Minors' Privacy Toolkit

Maryland

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 Maryland? Under Maryland law, a minor is an individual under the age of eighteen years. Md. Code Ann. Gen. Prov. § 1-103.

2

How does emancipation work in Maryland? Maryland does not have a specific procedure for emancipation. Instead, emancipation of a minor is determined on a case-by-case basis by the courts pursuant to case law. Additionally, Maryland courts have also provided for partial or complete emancipation. Pursuant to *Holly v. Maryland Auto Insurance Fund*, 29 Md. App. 498 (1975), the emancipation of a minor cannot be the result of any act of the child alone and requires action by the parent (such as abuse or neglect) or by the minor with the permission of the parent (such as marriage). In making its decision, the court will focus on the relationship between the parent and child and the goal of the person bringing the case.

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law/ statutory guidance
See paragraph above; Md. Code Ann., Est. & Trusts § 4-503	Consent to medical treatment; working and collecting own pay; anatomical gifts.	Voting rights, ability to drink alcohol, child labor laws and work permit rules, education laws	<i>Holly v. Maryland Auto Insurance Fund</i> , 29 Md. App. 498 (1975); <i>Lucas et ux. v. Maryland Drydock Co.</i> , 31 A.2d 637 (1943).

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 Maryland inform a minor’s right to consent to services? Except for information about an abortion, a health care provider may give a parent, guardian, or custodian of the minor, or the spouse of the parent, information about the minor’s treatment. See Md. Code Ann., Health-Gen. § 20-102(f).

<p>General medical or dental treatment</p>	<p>A minor has the same capacity as an adult to consent to medical or dental treatment if the minor: (1) is married; (2) is the parent of a child; (3) is living separately from their parents or guardians, whether it is with or without the consent of such parents or guardians and is self-supporting, regardless of the source of the minor’s income. See Md. Code Ann., Health-Gen. § 20-102.</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>Sexual health treatment</p>	<p>A minor has the same capacity as an adult to consent to treatment for or advice about pregnancy, venereal disease, physical examination, treatment of injuries from an alleged rape or sexual offense, and contraception, but not sterilization. See Md. Code Ann., Health-Gen. § 20-102(c).</p>
<p>Abortion</p>	<p>A physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor, except as follows:</p> <ul style="list-style-type: none"> • “Waiver of Notice” – No notice is required, if in the professional judgment of the physician: (i) notice to parent or guardian may lead to physical or emotional abuse of minor; (ii) minor is mature and capable of giving informed consent; or (iii) notification would not be in best interest of minor. • “Incomplete Notice” – No notice is required, if (i) minor does not live with a parent or guardian; and (ii) a reasonable effort to give notice to a parent or guardian is unsuccessful. <p>See Md. Code Ann., Health-Gen. § 20-103.</p>
<p>Emergency medical services</p>	<p>A minor has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain another’s consent. See Md. Code Ann., Health-Gen. § 20-102(b). However, a health care provider may inform minor’s parent, parent’s spouse, guardian, or custodian. See Md. Code Ann., § 20-102(f).</p> <p>No Consent: “A health care provider may treat a patient who is incapable of making an informed decision, without consent, if: (1) The treatment is of an emergency nature; (2) A person who is authorized to give the consent is not available immediately; and (3) The attending physician determines that:</p> <ul style="list-style-type: none"> • there is substantial risk of death or immediate and serious harm to the patient; and • with a reasonable degree of medical certainty, the life or health of the patient would be affected adversely by delaying treatment to obtain consent. Md. Code Ann., Health-Gen. § 5-607.

Drug and alcohol abuse treatment	<p>A minor has the same capacity as an adult to consent to treatment for, or advice about, drug abuse and alcoholism. A minor has the capacity to consent to psychological treatment for drug abuse or alcoholism if, in the judgment of the attending physician or a psychologist, the life or health of the minor would be affected adversely by delaying treatment to obtain another’s consent. See Md. Code Ann., Health-Gen. § 20-102(c).</p> <p>No Consent: A minor does not have the capacity to refuse treatment in a certified inpatient alcohol or drug abuse treatment program where a parent or guardian has given consent. See Md. Code Ann., Health-Gen. § 20-102(c).</p>
Outpatient mental health services	<p>A minor who is at least sixteen years old has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a physician, psychologist, or clinic. See Md. Code Ann., Health-Gen. § 20-104(a).</p> <p>No Consent: A minor does not have the capacity to refuse consultation, diagnosis, or treatment of a mental or emotional disorder by a physician, psychologist, or clinic where a parent or guardian has given consent. See Md. Code Ann., Health-Gen. § 20-104(a).</p>
Sexual assault and rape services	<p>A minor has the same capacity as an adult to consent to physical examination and treatment of injuries and physical examination to obtain evidence from an alleged rape or sexual offense. See Md. Code Ann., Health-Gen. § 20-102(c).</p>
Admission to detention center	<p>A minor has the same capacity as an adult to consent to initial medical screening and physical examination on and after admission into a detention center. See Md. Code Ann., Health-Gen. § 20-102(c).</p>

4

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

5

What are the child abuse mandatory reporting obligations in my jurisdiction?

Who is a mandatory reporter of child abuse? Health practitioners, police officers, educators, or human service workers, acting in a professional capacity in Maryland, are mandatory reporters. Md. Code Ann., Fam. Law § 5-704(a). Educators and human services workers include teachers, counselors, social workers, caseworkers, and probation or parole officers. Md. Code Ann., Fam. Law § 5-701(g). Furthermore, “a person” in Maryland “other than a health practitioner, police officer, or educator or human service worker who has reason to believe that a child has been subjected to abuse or neglect” shall report. Md. Code Ann., Fam. Law § 5-705(a)(1). A member of the clergy or attorney is not required to report if the communication is privileged. Md. Code Ann., Fam. Law § 5-705(a)(3).

(Further exceptions apply.)

How is “child” defined for purposes of Maryland’s mandatory reporting law? A child means any individual under eighteen years of age. See Md. Code Ann., Fam. Law § 5-704(e).

How is “abuse” defined? “‘Abuse’ means:

- (i) the physical or mental injury of a child under circumstances that indicate that the child’s health or welfare is harmed or at substantial risk of being harmed by:
 - 1. a parent;
 - 2. a household member or family member;
 - 3. a person who has permanent or temporary care or custody of the child;
 - 4. a person who has responsibility for supervision of the child; or
 - 5. a person who, because of the person’s position or occupation, exercises authority over the child; or
- (ii) The sexual abuse of a child, whether physical injuries are sustained or not.

‘Abuse’ does not include the physical injury of a child by accidental means.”

Md. Code Ann., Fam. Law § 5-701(b).

When must a mandatory reporter make a report? Any health practitioner, police officer, educator, or human service worker who is acting as a staff member of a hospital, public health agency, childcare institution, juvenile detention center, school, or similar institution shall immediately report. Md. Code Ann., Fam. Law § 5-704(a).

What must be reported if I am required to report child abuse? Health practitioners, police officers, educators, and human service workers must make an oral report and a written report. Md. Code Ann., Fam. Law § 5-704(b). Other persons may make an oral or written report. Md. Code Ann., Fam. Law § 5-705(c). “Insofar as reasonably possible,” reports must include “the following information:

- (1) the name, age, and home address of the child;
- (2) the name and home address of the child’s parent or other person who is responsible for the child’s care;
- (3) the whereabouts of the child;
- (4) the nature and extent of the abuse or neglect of the child, including any evidence or information available to the reporter concerning possible previous instances of abuse or neglect; and
- (5) any other information that would help to determine:
 - (i) the cause of the suspected abuse or neglect; and
 - (ii) the identity of any individual responsible for the abuse or neglect.”

Md. Code Ann., Fam. Law § 5-704(c); Md. Code Ann., Fam. Law § 5-705(d)(1).

To whom must I make a report when I’m required to do so? The local county department of social services or law enforcement. See Md. Code Ann., Fam. Law §§ 5-704.1; 5-705; 5-705.1. If the reporter is also acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, must immediately notify and give all information required by this section to the head of the institution or the designee of the head. Md. Code Ann., Fam. Law § 5-704(a).

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.

Maryland requires that a mental health care provider or administrator that knows of a patient’s propensity for violence and of the patient’s intention to inflict imminent physical injury upon a specified victim or group of victims make “reasonable and timely” efforts to inform law enforcement and the identified victims. See Md. Code Ann., Health-Gen. § 10-101.

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? There is no statutory privilege for communications between domestic violence and sexual assault survivors and their advocates in Maryland.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Maryland? Maryland statutory and case law does not directly address the question of whether having a parent or guardian present during an otherwise privileged communication waives the privilege.

9

Does Maryland have a privilege that protects the privacy of communication between a parent and a child? No, Maryland does not have an established parent-child privilege.

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).