



Minors' Privacy Toolkit

Massachusetts

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 Massachusetts? Under Massachusetts law, a minor is a person under the age of eighteen years. 104 Mass. Code Regs. 25.02; Mass. Gen. Laws Ann. ch. 4, § 7.

2

How does emancipation work in Massachusetts? Under Massachusetts law, emancipation grants minors certain rights of majority. Mass. Gen. Laws Ann. ch. 231, § 85P. Massachusetts does not have a formal procedure for a minor to petition the court for emancipation. However, there is also no fixed age when emancipation occurs which means it does not occur automatically when the child turns eighteen and a parent may still be required to provide for someone over eighteen. *Turner v. McCune*, 4 Mass. App. Ct. 864 (1976).

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law
Mass. Gen. Laws Ann. ch. 231, §§ 85P, 60D; Mass. Gen. Laws Ann. ch. 149, § 56-105.	Criminal law; anatomical gifts; medical malpractice claims; suing and being sued.	Voting rights; driving age; getting a marriage license; certain job requirements.	<i>Turner v. McCune</i> , 4 Mass. App. Ct. 864 (1976) (“there is no fixed age when emancipation occurs.”)

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 Massachusetts inform a minor's right to consent to services?

<p>Reproductive health</p>	<p>Under age eighteen: Consent for abortion must be obtained from the pregnant person and their parents (or court if necessary). A minor need not obtain the consent of both parents. <i>Planned Parenthood League v. AG</i>, 424 Mass. 586 (1997); <i>Baird v. Atty. Gen.</i>, 371 Mass. 741 (1977).</p> <p>Age twelve or older: Minors may consent to treatment for sexually transmitted diseases. Mass. Gen. Laws Ann. ch. 111, § 117.</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>Massachusetts courts have adopted the “mature minor rule” which means that if a doctor believes that a child is mature enough and able to give informed consent to medical care and it is in the best interests of the child not to notify their parents, the doctor may accept the child’s consent alone. <i>Baird v. Attorney General</i>, 371 Mass. 741, (1977).</p> <p>Any age: “Any minor may give consent to his medical or dental care ... if (i) he is married, widowed, divorced; or (ii) he is the parent of a child, in which case he may also give consent to medical or dental care of the child; or (iii) he is a member of any of the armed forces; or (iv) she is pregnant or believes herself to be pregnant; or (v) he is living separate and apart from his parent or legal guardian, and managing his own financial affairs; or (vi) he reasonably believe himself to be suffering from or to have come in contact with any disease defined as dangerous to the public health” Mass. Gen. Laws Ann. ch. 112, § 12F.</p>
<p>Mental health and chemical dependency</p>	<p>Age twelve or older: Minors may consent to treatment for drug addiction. Mass. Gen. Laws Ann. ch. 112, § 12.</p> <p>Age sixteen or older: Minors may commit themselves for mental health treatment without parental consent. Mass. Gen. Laws Ann. ch. 123, § 10.</p>

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

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 Massachusetts.

What are the child abuse mandatory reporting obligations in Massachusetts?

Who is a mandatory reporter of child abuse? In Massachusetts, there is a long list of professionals who are mandatory reporters. (See Mass. Gen. Laws Ann. ch. 119, §§ 21, 51A for a full list.) These reporters include:

- Social workers
- Mental health professionals (with exceptions)
- Health care providers
- Child advocates

How is “child” defined for purposes of Massachusetts’ mandatory reporting law? A child is a person under the age of eighteen. Mass. Gen. Laws Ann. ch. 119, § 21.

How is “abuse” defined? “Abuse” is not included in the list of terms pertaining to the child abuse statute. However, a mandated reporter must report when they have “reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him which causes harm or substantial risk of harm to the child’s health or welfare, including sexual abuse; (ii) neglect, including malnutrition; (iii) physical dependence upon an addictive drug at birth...; (iv) being a sexually exploited child; or (v) being a human trafficking victim” Mass. Gen. Laws Ch. 119 Sec. 51A(a).

When must a mandatory reporter make a report? A mandatory reporter must make an oral report immediately, followed by a written report within 48 hours. Mass. Gen. Laws Ann. ch. 119, § 51A.

What must be reported if I am required to report child abuse? The report must contain “(i) the names and addresses of the child and the child’s parents or other person responsible for the child’s care, if known; (ii) the child’s age; (iii) the child’s sex; (iv) the nature and extent of the child’s injuries, abuse, maltreatment or neglect, including any evidence of prior injuries, abuse, maltreatment or neglect; (v) the circumstances under which the person required to report first became aware of the child’s injuries, abuse, maltreatment or neglect; (vi) whatever action, if any, was taken to treat, shelter or otherwise assist the child; (vii) the name of the person or persons making the report; (viii) any other information that the person reporting believes might be helpful in establishing the cause of the injuries; (ix) the identity of the person or persons responsible for the neglect or injuries; and (x) other information required by the department.” Mass. Gen. Laws Ann. ch. 119, § 51A(d).

To whom must I make a report when I’m required to do so? Mandatory reporters must immediately report to the Department of Children and Families. If a mandated reporter is on the staff of a medical or other institution, school or facility, the reporter may notify the person in charge of such institution who shall become responsible for notifying the department in the manner required. A mandated reporter may, in addition to filing a report under this section, contact local law enforcement authorities or a child advocate about the suspected abuse or neglect. Mass. Gen. Laws Ann. ch. 119, § 51A(a).

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.

Massachusetts Licensed Mental Health Professionals have a statutory duty to warn any reasonably identified victim(s) and law enforcement if a patient makes an explicit threat to kill or seriously injure the victim(s) and has the apparent ability and intent to carry out the threat. See Mass. Gen. Laws Ann. ch. 123 § 36B.

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 domestic violence victim’s counselor shall not disclose confidential communications between the counselor and the victim of domestic violence without the prior written consent of the victim. Mass. R. Evid. § 505(b). Additionally, a confidential communication shall not be disclosed by a sexual assault counselor, is not subject to discovery, and is inadmissible in any criminal or civil proceeding without the prior written consent of the victim to whom the report, record, working paper, or memorandum relates. Mass. R. Evid. § 506(b).

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Massachusetts? The domestic violence- and sexual assault-victim’s counselor privileges include in their definitions of “confidential communication” information that is not disclosed to a “person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim.” Mass. R. Evid. §§ 505(a)(2); 506(a)(4).

9

Does Massachusetts have a privilege that protects the privacy of communication between a parent and a child? Yes. Mass. Gen. Laws Ann. ch. 233, § 20.

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).