



Michigan

Minors' Privacy Toolkit

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 Michigan? A minor is an individual under the age of eighteen. Mich. Comp. Laws §§ 722.51-722.52.

2

How does emancipation work in Michigan? Under Michigan law, emancipation grants minors certain rights of majority. Mich. Comp. Laws § 722.4. A minor over age sixteen may become emancipated by getting married, turning eighteen years old, or by serving as active duty military. Emancipation for a minor over sixteen is by commenced through an emancipation action pursuant to Mich. Comp. Laws § 722.4.

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law
Mich. Comp. Laws § 722.4	Right to contract, to sue or be sued, to retain earnings, to establish domicile, business rights, preventative health care, marriage. Mich. Comp. Laws § 722.4e.	Voting, use of alcoholic beverages. Mich. Comp. Laws § 722.4e.	<i>Ryan v. Ryan</i> , 260 Mich. App. 315 (2004) (explaining the statutory requirements for emancipation under Mich. Comp. Laws § 722.4a but finding that the minor did not establish a claim for emancipation).

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.

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

<p>Reproductive health</p>	<p>Any age: Parental consent required for a minor's abortion. Mich. Comp. Laws §§ 722.901-909.</p> <p>Any age: Minors may consent to prenatal and pregnancy-related care regardless of their marital status. A minor may also consent to the health care of their child. Mich. Comp. Laws § 333.9132.</p> <p>Any age: Minors may consent to medical or surgical care for diagnoses and treatment of sexually transmitted infections and HIV. Mich. Comp. Laws §§ 333.5127 and 333.5133.</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>Mental health and chemical dependency</p>	<p>Any age: A minor may be hospitalized if a parent or legal guardian requires it for mental health reasons and the minor is found suitable for hospitalization. Mich. Comp. Laws § 330.1498m.</p> <p>Minors age fourteen and older may request and receive mental health services and a mental health professional can provide such services, on an outpatient basis, without consent of parent. Mich. Comp. Laws § 330.1707. A minor age fourteen and older may also object to their own hospitalization. Mich. Comp. Laws § 330.1498m.</p> <p>Any age: Consent to treatment for substance abuse. Mich. Comp. Laws § 333.6121.</p>

4

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

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What are the child abuse mandatory reporting obligations in Michigan?

Who is a mandatory reporter of child abuse? In Michigan, there is a long list of professionals who are mandatory reporters. (See Mich. Comp. Laws § 722.623 for a full list.) These reporters include:

- Social workers
- Mental health professionals (with exceptions)
- Health care providers
- School employees

Furthermore, any “employee of an organization or entity that, as a result of federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a state mandate or court order” “shall report” Mich. Comp. Laws § 722.623(c).

How is “child” defined for purposes of Michigan’s mandatory reporting law? “Child” means a person under eighteen years of age. Mich. Comp. Laws § 722.622.

How is “abuse” defined? “Child abuse” means harm or threatened harm to a child’s health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child’s health or welfare by a teacher, a teacher’s aide, or a member of the clergy. Mich. Comp. Laws § 722.622.

When must a mandatory reporter make a report? A report must be made immediately by telephone and within seventy-two hours in writing. Mich. Comp. Laws § 722.623.

What must be reported if I am required to report child abuse? The written report or a report made using the online reporting system shall contain the name of the child and a description of the child abuse or neglect. If possible, the report shall contain the names and addresses of the child’s parents, the child’s guardian, the persons with whom the child resides, and the child’s age. The report shall contain other information available to the reporter that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred. Mich. Comp. Laws § 722.623.

To whom must I make a report when I’m required to do so? Reports must be made to a centralized intake or online reporting system. “Centralized intake” means the department’s statewide centralized processing center for reports of suspected child abuse and neglect. Mich. Comp. Laws §§ 722.622–623.

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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.

“Mental health professionals” have a statutory duty to “take action” when a patient makes a threat of physical violence against a reasonably identifiable third party with the apparent ability to carry out the threat in the “foreseeable future.” See Mich. Comp. Laws § 330.1946. “Take action” means report the threat to the third party and to law enforcement. These professionals also have a duty to report when a minor is suicidal or a danger to others. (Mich. Comp. Laws § 330.1946; *Dawe v. Dr. Reuven Bar-Levav & Assocs., P.C.*, 485 Mich. 20, 33 (2010) (finding that the statute that codifies a mental health professional’s duty to warn or protect third persons from harm by their patients does not completely abrogate a mental health professional’s common-law special relationship duty to protect their patients by exercising reasonable care); *People v. Carrier*, 309 Mich. App. 92 (2015) (holding that specialist was a mental health professional for purposes of the duty to warn or protect reasonably identifiable third persons regarding a patient’s threat of violence)).

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. “Except as provided by ... section 722.631 of the Michigan Compiled Laws, a confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim.

Mich. Comp. Laws 600.2157a(2).

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Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Michigan? The answer to this question depends on if the disclosure to the parent or guardian is “reasonably necessary to further the interests” of the minor. “‘Confidential communication’ means information transmitted between a victim and a sexual assault or domestic violence counselor, or between a victim or sexual assault or domestic violence counselor and any other person to whom disclosure is reasonably necessary to further the interests of the victim, in connection with the rendering of advice, counseling, or other assistance by the sexual assault or domestic violence counselor to the victim.” Mich. Comp. Laws § 600.2157a(1)(a).

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

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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).