



# Minors' Privacy Toolkit

## Minnesota

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.<sup>1</sup> 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](mailto:TA@victimrights.org).

1

**Who is a "minor" in Minnesota?** Under Minnesota law, a minor is an individual under the age of eighteen years. Minn. Stat. Ann. § 645.451.

2

**How does emancipation work in Minnesota?** Minnesota does not have a statutory emancipation process. Instead, emancipation of a minor is determined on a case-by-case basis by the courts pursuant to case law. Pursuant to *Sonnenberg v. County of Hennepin*, 99 N. W.2d 444 (1959), emancipation can be "partial, conditional ... or limited as to time or purpose." A minor may be emancipated by legal marriage or by parental consent. See also *Lundstrom v. Mample* 285 N.W. 83 (Minn. 1939); *In re Fiihr* 184 N.W.2d 22 (Minn. 1971).

Minor as adult for these purposes	Emancipation does not affect	Relevant case law/statutory guidance
Consent to medical treatment, employment contracts, forego immunization because of religious beliefs, vehicle ownership, public assistance eligibility	Voting rights, ability to drink alcohol, child labor laws and work permit rules, education laws	<i>Sonnenberg v. County of Hennepin</i> , 99 N. W.2d 444 (1959); <i>Lundstrom v. Mample</i> , 285 N.W. 83 (Minn. 1939); <i>In re Fiihr</i> , 184 N.W.2d 22 (Minn. 1971); <i>Lufkin v. Harvey</i> , L.R.A. 1916B, 1111 (1915); Minn. Stat. Ann. § 121A.15, Minn. Stat. Ann. § 168.101, Minn. Stat. Ann. § 256D.05.

<sup>1</sup> 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/](https://www.americanbar.org/groups/legal_services/flh-home/flh-hire-a-lawyer/). Or contact your jurisdiction's coalition or bar association.

### 3

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

<p><b>Medical, dental, mental, and other health service treatment</b></p>	<p>A minor may consent to medical, dental, mental, and other health services if the minor has been married, has borne a child, or is living separately from their parents or legal guardians and is managing their personal financial affairs. See Minn. Stat. Ann. §§ 144.341; 144.342.</p> <p>A health care provider may give a parent or legal guardian of the minor information about treatment needed or provided if in the judgment of the professional, failure to inform would seriously jeopardize the health of the minor patient (with the exception of abortion, please see below for more information). See Minn. Stat. Ann. § 144.346.</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><b>Abortion</b></p>	<p>A physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or legal guardian of the minor, except:</p> <ul style="list-style-type: none"> <li>• No notice is required if the attending physician certifies that the abortion is needed to prevent the minor’s death and there is insufficient time to provide the required consent; the abortion is authorized in writing by the person(s) entitled to notice; or the minor declares they are a victim of sexual abuse, neglect, or physical abuse. Notice of such declaration will be made per Minn. Stat. Ann. § 626.556, subdivision 3. Minn. Stat. Ann. § 144.343.</li> <li>• Judicial bypass to these notice requirements is available if the judge determines the minor is mature and capable of giving informed consent to the abortion. See Minn. Stat. Ann. § 144.343.</li> </ul>

### 4

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

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 Minnesota.

### 5

#### What are the child abuse mandatory reporting obligations in Minnesota?

**Who is a mandatory reporter of child abuse?** The list of professionals who are required to report child physical abuse, sexual abuse, or neglect includes (see Minn. Stat. § 260E.06, Subdivision 1 for complete list): Professionals involved in the healing arts, social services professionals, professionals providing psychological or psychiatric treatment, child care professionals, education professionals, and clergy (except for privileged information).

**How is “child” defined for purposes of Minnesota’s mandatory reporting law?** “Child” is not specifically defined in the Minnesota child abuse mandatory reporting law. Please see Question 1 for a definition of a “minor” in Minnesota.

**How is “abuse” defined?** Child “maltreatment” includes egregious harm, neglect, physical abuse, sexual abuse, substantial child endangerment, threatened injury, mental injury, and maltreatment of a child in a facility. See Minn. Stat. § 260E.03, Subdivision 12.

“Physical abuse” “means any physical, mental, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child’s history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized under Minn. Stat. Ann. § 125A.0942 or 245.825 [standards applicable to certain schools, facilities, or services],” but “does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury,” or “ the use of reasonable force by a teacher, principal, or school employee ....” Minn. Stat. §260E.03, Subdivision 18.

“Sexual abuse” “means the subjection of a child by a person responsible for the child’s care, ... or who has a significant relationship to the child, ... or by a person in a position of authority ... to any act which constitutes a violation of [Minnesota’s criminal sexual conduct laws (found at Minn. Stat. Ann. § 609.342 through 609.3451)]. Sexual abuse also includes “any act involving a minor that constitutes a violation of prostitution offenses ...; and all reports of known or suspected child sex trafficking involving a child who is identified as a victim of sex trafficking.” Minn. Stat. §260E.03, Subdivision 20.

**When must a mandatory reporter make a report?** A mandatory reporter who knows or has reason to believe a child is being maltreated within the preceding three years must report “immediately,” which means as soon as possible and within twenty-four hours. See Minn. Stat. § 260E.06, Subdivision 1(a) and § 260E.03, Subdivision 9. An oral report shall be made immediately by telephone or otherwise. An oral report made by a mandatory reporter “shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the appropriate police department, the county sheriff, the agency responsible for assessing or investigating the report, or the local welfare agency.” Minn. Stat. § 260E.09(a).

**What must be reported if I am required to report child abuse?** An oral report and a written report must be made. Both reports must include the following, insofar as it is reasonably possible:

- child’s identity
- anyone believed to be responsible for the abuse or neglect of the child if known
- nature and extent of maltreatment
- name and address of the reporter (though a report will be accepted notwithstanding refusal by a reporter to provide their name or address as long as the report is otherwise sufficient).

See Minn. Stat. § 260E.09(b).

**To whom must I make a report when I’m required to do so?** Reports must be made to the local welfare agency, agency responsible for assessing or investigating the report, police department, county sheriff, tribal social services agency, or tribal police department. See Minn. Stat. Ann. § 260E.06, Subdivision 1(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.

Licensed psychologists and others have a statutory duty to predict, warn, or take reasonable precautions to protect clearly identifiable third parties when patients make a “specific, serious threat of violence.” See Minn. Stat. Ann. § 148.975, Subdivision 2; Minn. R. 7200.4700, Subpart 2. This duty is performed by warning the potential victim, or law enforcement if the victim is not available. *Id.* Additionally, Minnesota common law recognizes mental health professionals may have a “duty to control” patients who make a specific, foreseeable threat of harm against third parties when a practitioner has the “ability to control.” See *Lundgren v. Fultz*, 354 N.W.2d 25 (Minn. Sup. Ct., 1984).

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](mailto: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. Sexual assault counselors may not be compelled to testify, without the consent of the victim, about information received from or about the victim. Minn. Stat. Ann. § 595.02 (subdivision 1(k)). There is an exception when testimony serves “to identify or disclose information in connection with investigations or proceedings related to neglect or the termination of parental rights.” *Id.*

A domestic abuse advocate may not be compelled to testify, without the consent of the victim, about information received from or about the victim, unless ordered by the applicable court. Minn. Stat. Ann. § 595.02 (subdivision 1(l)).

8

**Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Minnesota?** Minnesota 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 Minnesota have a privilege that protects the privacy of communication between a parent and a child?** Yes, Minnesota has an established parent-child privilege. See Minn. Stat. Ann. § 595.02, Subdivision 1(j).

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).