



Nebraska

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 Nebraska? Under Nebraska law, a minor is a person under the age of nineteen. Neb. Rev. Stat. § 43-2101. However, an individual's minority status immediately terminates upon marriage regardless of whether they have attained the age of nineteen. Id.

2

How does emancipation work in Nebraska? A minor who is at least sixteen years old, living apart from their parents or legal guardian, and who is a legal resident may file a petition in the district court of their county of residence for a judgment of emancipation. Neb. Rev. Stat. § 43-4802.

Further specifics regarding the procedure for a hearing for judicial emancipation are set forth in Neb. Rev. Stat. §§ 43-4804 to 43-4812.

In addition to the above judicial procedure for emancipation, the Nebraska Supreme Court stated that where a minor departs from the family home with parental consent, takes their personal belongings with them, and from then after furnishes their own support and receives nothing from their parents, the minor has become emancipated. *Accent Service Co., Inc. v. Ebsen*, 209 Neb. 94, 306 N.W.2d 575 (1981).

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect
Neb. Rev. Stat. §§ 43-4810, 43-4811	Establishment of own residence; incurring indebtedness or contractual obligations; consenting to medical, dental, or psychiatric care without consent, knowledge, or liability of parents or a guardian; enlisting in military; marrying; being individually eligible for public assistance; litigation and settlement of controversies; enrolling in any school or college; and acquiring, encumbering, and conveying property.	Criminal prosecution

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

Reproductive health	<p>The age of consent for abortion in Nebraska is eighteen years of age. Neb. Rev. Stat. § 71-6902.</p> <p>Someone under eighteen may still undergo an abortion if the abortion provider first obtains the notarized written consent of both (1) the person seeking the abortion and (2) at least one of their parents or a legal guardian. <i>Id.</i> Someone under eighteen may obtain notarized written consent from one of their grandparents instead if they attest in writing that they have been abused by either of their parents or legal guardians. Neb. Rev. Stat. § 71-6902.01. Someone under eighteen does not need to obtain any form of notarized written consent if they clearly and convincingly demonstrate to an appropriate court that they are “both sufficiently mature and well-informed to decide whether to have an abortion.” Neb. Rev. Stat. § 71-6903. Someone under eighteen does not need any form of notarized written consent if “the attending physician certifies in the pregnant woman’s medical record that a medical emergency exists and there is insufficient time to obtain the required consent.” Neb. Rev. Stat. § 71-6906.</p> <p>Pregnant minors may consent on their own behalf to genetic testing of the fetus. 181 Nebraska Administrative Code 5-002.</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>A minor in Nebraska can consent to their own medical treatment if the following three factors are met: (1) the minor is at least eighteen years old; (2) the minor is not a ward of the state; and (3) one of the minor’s parents or guardians properly executes a power of attorney which says that the minor has authority to consent to the minor’s own medical care. Neb. Rev. Stat. § 30-2604.</p>
Mental health and chemical dependency	<p>A minor who is eighteen years old may consent to mental health services for themselves without the consent of their parent or guardian. Neb. Rev. Stat. § 43-2101.</p>
Other	<p>Minors may be treated for sexually transmitted diseases (STDs) without consent from, or notification to, their parents or guardians. Such treatment includes treatments to prevent contracting an STD (i.e., providing prophylactics). However, the parents of minors who are treated for STDs remain financially responsible for the costs of the treatment. Neb. Rev. Stat. § 71-504.</p> <p>A minor may consent to their own organ donation if they are eighteen years old or they are at least sixteen years old and authorized under state law to apply for a driver’s license. <i>See</i> Neb. Rev. Stat. § 71-4827.</p> <p>The common law generally provides that parental consent is not required for treating a minor in an emergency situation. Neb. Rev. Stat. § 38-1232.</p>

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

What are the child abuse mandatory reporting obligations in Nebraska?

Who is a mandatory reporter of child abuse? Any “physician, medical institution, nurse, school employee, social worker, the Inspector General of Child Welfare, or any other person that has reasonable cause to believe a child has been abused or neglected ... shall report such incident or cause a report ... to be made.” Neb. Rev. Stat. § 28-711.

How is “child” defined for purposes of Nebraska’s mandatory reporting law? Neither “child” nor “minor” is defined in Nebraska’s mandatory reporting law. Instead “child abuse or neglect” is defined as “knowingly, intentionally, or negligently causing or permitting a *minor child*” to be abused (as further defined). *Id* (emphasis added).

Under Neb. Rev. Stat. 28-830 (the human trafficking statute), “minor means a person younger than eighteen years of age.” Because sex trafficking of a minor is incorporated into the Nebraska definition of “abuse” (see below) arguably a minor for mandatory reporting purposes is a person younger than eighteen years of age.

How is “abuse” defined? “Child abuse or neglect means knowingly, intentionally, or negligently causing or permitting a minor child to be: (i) Placed in a situation that endangers their life or physical or mental health; (ii) Cruelly confined or cruelly punished; (iii) Deprived of necessary food, clothing, shelter, or care; (iv) Left unattended in a motor vehicle if such minor child is six years of age or younger; (v) Placed in a situation to be sexually abused; (vi) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section 28-830 or by allowing, encouraging, or forcing such person to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or (vii) placed in a situation to be a trafficking victim as defined in section 28-830.” Neb. Rev. Stat. § 28-710.

When must a mandatory reporter make a report? There is no statutorily defined time period in which a reporter must report to the Nebraska Department of Health and Human Services.

What must be reported if I am required to report child abuse? To the extent available, the report “shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators.” Neb. Rev. Stat. § 28-711.

To whom must I make a report when I’m required to do so? Reports should be made to a law enforcement agency or the Nebraska Department of Health and Human Services. “Such report may be made orally by telephone with the caller giving their name and address, and shall be followed by a written report.” Neb. Rev. Stat. § 28-711.

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.

When a patient of mental health practitioners (including psychiatrists, psychologists, social workers, and others) makes a “serious threat of physical violence” against a “reasonably identifiable victim,” mental health practitioners must warn both the victim and law enforcement of the threat. See Neb. Rev. Stat. § 38-2137 and Neb. Rev. Stat. § 38-3132. Nebraska also recognizes a “common law duty” for psychologists and psychotherapists to “initiate whatever precautions are reasonably necessary to protect potential victims of a patient.” Neb. Rev. Stat. § 38-3132.

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. Advocates “shall not be compelled to give testimony or to produce records concerning a confidential communication for any purpose in any criminal, civil, legislative, or administrative proceeding.” Neb. Rev. Stat. 29-4303. However, there are exceptions for mandatory reporting of actual or suspected child abuse or neglect, other legal duties to report criminal acts, and when a victim sues the advocate or their organization. Neb. Rev. Stat. 29-4303.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Nebraska? No. “Confidential communication means any written or spoken information exchanged between a victim and an advocate in private or in the presence of a third party who is necessary to facilitate communication or further the advocacy process and which is disclosed to the advocate for the purposes of overcoming the adverse effects of domestic violence or sexual assault.” Neb. Rev. Stat. 29-4302 (3).

9

Does Nebraska 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).