



# Minors' Privacy Toolkit

## New Hampshire

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 New Hampshire?** Under New Hampshire law, a minor is a person under eighteen years old. N.H. Rev. Stat. § 21-B:1.

2

**How does emancipation work in New Hampshire?** Minors who are sixteen years or older may petition for “limited emancipation” under N.H. Rev. Stat. § 461-B:4. The court's order of limited emancipation sets forth the rights and responsibilities being conferred upon the minor. N.H. Rev. Stat. § 461-B:8. These rights may include the right to live independently, in housing of the minor's choice; the right to control one's financial affairs and earn money; the right to consent to medical, psychiatric, education, and social services, as well as other rights. *Id.* Emancipated minors are not considered adults for voting rights; use and possession of alcohol, tobacco, and firearms; gambling; criminal laws; or for the requirement to attend school until graduation or pursue a high school equivalency. *Id.* Furthermore, an emancipated minor with an enumerated right to live independently is not considered a minor child under Chapter 173:B (New Hampshire's “protection of persons from domestic violence” statutes, which grants parents certain rights to visitation and custody in domestic violence proceedings.) See N.H. Rev. Stat. § 461-B:8 (VI).

3

**What laws in New Hampshire inform a minor's right to consent to services?**

### Reproductive health

Unemancipated minors or people who have been appointed guardians or conservators because of a finding of incompetency cannot consent to an abortion until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in N.H. Rev. Stat. § 132:33. Notice is not required under N.H. Rev. Stat. § 132:33 if “a medical emergency exists and there is insufficient time to provide the required notice,” or the persons entitled to notice “certify in writing that they have been notified.” *Id.*

<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.

<p><b>Reproductive health, cont.</b></p>	<p>A pregnant minor may elect not to allow parent, guardian, or conservator notification and instead motion the superior court for authorization. Judges “shall authorize an abortion provider to perform the abortion if said judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion.” If the judge determines that the minor is not mature, the judge shall authorize the abortion if they determine that an abortion without notification would be “in the pregnant minor’s best interest.” <i>Id.</i></p> <p>Minors age fourteen or older may voluntarily submit to medical diagnosis and treatment for a sexually transmitted disease and a licensed physician may diagnose, treat or prescribe for the treatment of a sexually transmitted disease, without the knowledge or consent of the parent or legal guardian of such minor. N.H. Rev. Stat. § 141-C:18.</p> <p>In the event a minor received a positive HIV test, the physician or the person authorized by the physician may disclose the test results to a parent or legal guardian. N.H. Rev. Stat. § 141-F:7.</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>General medical</b></p>	<p>N.H. Rev. Stat. § 153-A:18 provides that emergency medical care providers are not liable for treating minors without their parent or guardian’s consent as long as they are acting in good faith.</p>
<p><b>Chemical dependency</b></p>	<p>Minors age twelve and older may voluntarily submit to “treatment for drug dependency or any problem related to the use of drugs at any municipal health department, state institution or facility, public or private hospital or clinic, any licensed physician or advanced practice registered nurse practicing within such nurse practitioner’s specialty, or other accredited state or local social welfare agency, without the consent of a parent, guardian, or any other person charged with the care or custody of said minor.” N.H. Rev. Stat. § 318-B:12.</p>

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

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**What are the child abuse mandatory reporting obligations in New Hampshire?**

**Who is a mandatory reporter of child abuse?** In New Hampshire, mandatory reporters include: physicians and other medical professionals; psychologists, therapists, social workers, and other mental health professionals; law enforcement; religious leaders including Christian Science practitioners; school employees such as teachers, school nurses and officials; childcare or foster

care workers; and “any other person having reason to suspect that a child has been abused or neglected.” N.H. Rev. Stat. § 169-C:29.

**How is “child” defined for purposes of New Hampshire’s mandatory reporting law?** “Child” means any person who has not reached their eighteenth birthday. N.H. Rev. Stat. § 169-C:3(V).

**How is “abuse” defined?** Abused child means “any child who has been: (a) Sexually abused; or (b) Intentionally physically injured; or (c) Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or (d) Physically injured by other than accidental means.” N.H. Rev. Stat. § 169-C:3(II).

Neglected child means “a child: (a) Who has been abandoned by their parents, guardian, or custodian; or (b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health, when it is established that the child’s health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian; or (c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity.” There is an exception for good faith religious treatment and prayer as medical treatment. N.H. Rev. Stat. § 169-C:3(XIX).

**When must a mandatory reporter make a report?** Oral reports shall be made immediately and followed within 48 hours by a report in writing if requested. N.H. Rev. Stat. § 169-C:30.

**What must be reported if I am required to report child abuse?** A report “shall, if known, contain the name and address of the child suspected of being neglected or abused and the person responsible for the child’s welfare, the specific information indicating neglect or the nature and extent of the child’s injuries (including any evidence of previous injuries), the identity of the person or persons suspected of being responsible for such neglect or abuse, and any other information that might be helpful in establishing neglect or abuse or that may be required by the department.” N.H. Rev. Stat. § 169-C:30.

**To whom must I make a report when I’m required to do so?** Reports should be made to the New Hampshire Department of Health and Human Services Child Protective Services.

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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 (including clinical social workers and counselors) and some nurses have a statutory duty to warn and protect clearly identified or identifiable victims when their patients make a serious threat of physical violence. N.H. Rev. Stat. Ann. §§ 329-B:29; 330-A:35; 326-B:33. The same professionals have similar duties to warn and protect if the patient makes a threat of substantial damage to real property. *Id.* To discharge the duty, these professionals must warn the intended victim or the police department closest to the potential victim’s residence. *Id.*

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.

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**May domestic violence and sexual assault advocates have privileged communications with a minor survivor?** Yes. Victims have the privilege to refuse to disclose and prevent others from disclosing a confidential communication made to a sexual assault counselor. N.H. Rev. Stat. § 173-C:2, C:3.

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**Does a parent or guardian's presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in New Hampshire?** The privilege extends to third parties "present to assist communication with the victim" or who "assist a victim that is physically challenged." N.H. Rev. Stat. § 173-C:2.

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**Does New Hampshire 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).