



Minors' Privacy Toolkit

New Jersey

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 New Jersey? Under New Jersey law, a minor is a person under eighteen years old. N.J. Stat. Ann. § 9:17B-3.

2

How does emancipation work in New Jersey? A child that wishes to become emancipated will need to prove to a court that they are at least sixteen years old, living away from the family home, and capable of supporting themselves. *Filippone v. Lee*, 304 N.J. Super. 301, 308 (“the essential inquiry is whether the child has moved beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his or her own”) (quotations omitted). Elements that would favor emancipation include if you are married, have joined the military, have finished your high school education, or have a full-time job. *Id.* at 308-12.

3

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

Reproductive health; General medical	<p>Medical or Surgical Care: A minor's consent to medical or surgical care is valid and binding whenever:</p> <ul style="list-style-type: none">• The minor is any age and believes they have a sexually transmitted infection;• The minor is at least thirteen years old and believes they may be infected with HIV/AIDS; or• The minor is any age and appears, in the judgment of the treating physician, to have been sexually assaulted. <p>N.J. Stat. Ann. § 9:17A-4. However, if the physician believes that the minor is the victim of sexual assault, the minor's parents must be notified immediately unless the physician determines that it is not in the minor's best interest. <i>Id.</i></p>
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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.

Reproductive health; General medical; cont.	<p>Note: All clinics or providers who participate in Title X grant programs are required to follow federal regulations regarding consent and confidentiality per 42 CFR 59.11.</p> <p>Under New Jersey law, only in the case of drug abuse and abortion is medical treatment considered confidential information. In other circumstances <i>medical personnel may choose to inform parents of their children’s medical treatment despite a minor’s express orders to the contrary.</i> N.J. Stat. Ann. § 9:17A-5.</p>
Mental health and chemical dependency	<p>Alcohol and Substance Abuse Care: A minor who believes that they are “adversely affected by a substance use disorder involving drugs or is a person with a substance use disorder involving drugs ... or is a person with an alcohol use disorder” may consent to treatment under the supervision of a physician or a licensed alcohol treatment provider or licensed alcohol treatment facility. N.J. Stat. Ann. § 9:17A-4.</p> <p>Sixteen or older – Mental or Emotional Outpatient Care: A minor who is at least sixteen and believes they are “in need of behavioral health care services for the treatment of mental illness or emotional disorders” may consent to “temporary outpatient treatment, excluding the use or administration of medication, under the supervision of a physician licensed to practice medicine, an advanced practice nurse, or an individual licensed to provide professional counseling.” N.J. Stat. Ann. § 9:17A-4. “Treatment for behavioral health care services for mental illness or emotional disorders that is consented to by a minor shall be considered confidential.” <i>Id.</i></p> <p>IMPORTANT NOTE: Under New Jersey law, only in the case of drug abuse and abortion is medical treatment considered confidential information. In other circumstances <i>medical personnel may choose to inform parents of their children’s medical treatment despite a minor’s express orders to the contrary.</i> N.J. Stat. Ann. § 9:17A-5.</p>

4

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

5

What are the child abuse mandatory reporting obligations in New Jersey?

Who is a mandatory reporter of child abuse? In New Jersey, “any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Child Protection and Permanency by telephone or otherwise.” N.J. Stat. Ann. § 9:6-8.10.

How is “child” defined for purposes of New Jersey’s mandatory reporting law? A child is a person who is actually or apparently under eighteen years of age. N.J. Stat. Ann. 9:6-8.9.

How is “abuse” defined? Child abuse consists of any of the following:

- abandonment
- employing or allowing a child to have employment dangerous to child’s life, limb, or morals
- habitual use by the parent of profane, indecent, or obscene language
- indecent, immoral, or unlawful act or deed performed in presence of a child
- permitting or allowing another person to perform any indecent, immoral, or unlawful act in presence of child
- using excessive physical restraint on child under circumstances which do not indicate that child’s behavior is harmful to themselves, others, or property
- willfully isolating child from ordinary social contact under circumstances which indicate emotional or social deprivation.

N.J. Stat. Ann. § 9:6-1.

Child cruelty consists of any of the following:

- inflicting unnecessarily severe corporal punishment
- inflicting unnecessary suffering of pain (either mental or physical)
- habitually tormenting, vexing, or afflicting a child
- a willful act or omission causing or permitting unnecessary pain and suffering (whether mental or physical)
- exposing child to unnecessary hardship, fatigue, or mental or physical strains that may tend to injure the health or well-being of child.

N.J. Stat. Ann. § 9:6-1.

When must a mandatory reporter make a report? Mandatory reporters are required to report suspected child abuse when they have “reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse.” N.J. Stat. Ann. § 9:6-8.10.

What must be reported if I am required to report child abuse? Mandatory reporters (i.e., any person with reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse) must make reports containing:

- names and addresses of child and their parent, guardian, or other person having their custody and control
- child’s age (if known)
- nature and possible extent of child’s injuries, abuse, or maltreatment, including evidence of previous injuries, abuse, or maltreatment
- any other information that reporter believes may be helpful with respect to child abuse and identity of the perpetrator.

N.J. Stat. Ann. § 9:6-8.10.

To whom must I make a report if I am required to report child abuse? A mandatory reporter must make the report to the Division of Child Protection and Permanency by telephone or otherwise. N.J. Stat. Ann. § 9:6-8.10.

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.

In New Jersey, each of the following must report that a minor attempted or completed suicide, if they have a reasonable cause to suspect or believe such as a result of information obtained through their employment:

- a. any teaching staff member;
- b. any licensed psychologist, social worker, marriage and family therapist, professional counselor, physician, physician assistant, alcohol and drug counselor, or registered nurse or licensed practical nurse; and
- c. any public health official, probation officer, employee of the Superior Court, Chancery Division, Family Part, Certified Domestic Violence Specialist, or member of a professional group identified by the council as having a likelihood to know about suicide attempts and deaths.

N.J. Stat. Ann. § 30:9A-24. All such reports must be made to the Division of Mental Health Services in the Department of Human Services. N.J. Stat. Ann. § 30:9A-23-24.

Further, “any person who is licensed in the State of New Jersey to practice psychology, psychiatry, medicine, nursing, clinical social work or marriage and family therapy” has a duty to warn if:

- a. the patient has communicated a threat of imminent, serious physical violence against a readily identifiable individual or against himself, and the professional believes that the patient intends to carry out the threat; or
- b. the professional believes the patient intends to carry out an act of imminent, serious physical violence against a readily identifiable individual or against himself.

N.J. Stat. Ann. § 2A:62A-16. The warning must be made to law enforcement, or the professional must arrange to have the patient voluntarily or involuntarily committed to a psychiatric facility. *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 to discuss our survey of jurisdiction-specific case law that may affect your duties to warn or protect.

May domestic violence and sexual assault advocates have privileged communications with a minor survivor? In certain circumstances. New Jersey has a victim-counselor privilege law that protects confidential communications that occur in the course of a counseling relationship. N.J. Stat. Ann. § 2A:84A-22.13-16; N.J. R. E. 517. However, this privilege only extends to the communications exchanged within the *counseling* process (not the advocacy process). *See id.* There is no privilege for domestic violence victims and their non-legal advocates.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in New Jersey? There is no clear law in New Jersey regarding whether the presence of a parent or guardian would destroy the victim-counselor privilege where the victim is a minor. New Jersey does make it clear that the psychotherapist-patient privilege is widely recognized as applicable to communications made in marriage counseling or group therapy sessions where multiple parties are routinely present. See, e.g., *Touma v. Touma*, 357 A.2d 25, 29, 30 (N.J. Super. Ct. Ch. Div. 1976), (holding that pursuant to N.J. Stat. Ann. §§ 45:8B, the presence of a third party in marriage. Counseling the spouse does not destroy the psychotherapist-patient privilege).

9

Does New Jersey have a privilege that protects the privacy of communication between a parent and a child? New Jersey does not have an established parent-child privilege.

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).