



# Minors' Privacy Toolkit

## New Mexico

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 Mexico?** "Minor" is not a defined term in New Mexico's Children's Code, which covers emancipation. However, "child" is defined as a person who is less than 18 years old. N.M. Stat. Ann. § 32A-1-4. See also N.M. Stat. Ann. § 24-7B-3 ("emancipated minor" means an individual between the ages of sixteen and eighteen who has been married, who is on active duty in the armed forces or who has been declared by court order to be emancipated") (with regard to medical decisions).

2

**How does emancipation work in New Mexico?** A person sixteen years of age or older may obtain "emancipated" status by entering into a valid marriage, serving on active duty with any of the U.S. armed forces, or obtaining a declaration of emancipation. N.M. Stat. Ann. § 32A-21-3.

Any person sixteen years of age or older may be declared an emancipated minor for one or more of the purposes enumerated in the Emancipation of Minors Act if they are willingly living separate and apart from their parents, guardian or custodian, are managing their own financial affairs and the court finds emancipation is in their best interest. N.M. Stat. Ann. § 32A-21-4.

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect
N.M. Stat. Ann. §§ 32A-21-1, 32A-21-5, 32A-21-6.	Consenting to medical, dental or psychiatric care; capacity to enter into a binding contract; capacity to sue and be sued; right to parental support; rights of their parents to their earnings and to control them; establishing own residence; buying or selling real property; ending vicarious liability of their parents, guardian or custodian for their torts; enrolling in any school or college.	A declared emancipated minor shall not be denied benefits from any public entitlement program to which they may have been entitled in their own right prior to the declaration of emancipation.

<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.

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

<p><b>Reproductive health</b></p>	<p>A pregnant minor may consent to prenatal, delivery and postnatal care by a licensed health care provider. N.M. Stat. Ann. § 24-1-13.1.</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 medicine</b></p>	<p><b>Age seventeen or older:</b> A minor age seventeen or older may donate blood without parental consent. N.M. Stat. Ann. § 24-10-6.</p> <p><b>Age fourteen or older:</b> A minor fourteen years of age or older may consent to medically necessary health care; provided the minor is:</p> <ol style="list-style-type: none"> <li>(1) living apart from their parents or legal guardian; or</li> <li>(2) the parent of a child.</li> </ol> <p>“Medically necessary health care” means clinical and rehabilitative, physical, mental, or behavioral health services that are:</p> <ol style="list-style-type: none"> <li>(1) essential to prevent, diagnose or treat medical conditions or to have functional capacity;</li> <li>(2) delivered in the amount, setting, duration and scope that is clinically appropriate to the needs of the minor;</li> <li>(3) provided within professionally accepted standards of practice; and</li> <li>(4) required to meet the needs of the minor (rather than the convenience of the minor, health-care provider, or payer).</li> </ol> <p>N.M. Stat. Ann. § 24-7A-6.2.</p> <p>Any emancipated minor or any minor who has contracted a lawful marriage may give consent to the furnishing of hospital, medical, and surgical care to such minor, and the consent is not subject to disaffirmance because of minority. N.M. Stat. Ann. § 24-10-1.</p>
<p><b>Mental health</b></p>	<p><b>Over fourteen years:</b> May consent to individual psychotherapy, group psychotherapy, guidance counseling, case management, behavioral therapy, family therapy, counseling, substance abuse treatment or other forms of verbal treatment that do not include aversive interventions. Psychotropic medications may be administered to a child fourteen years of age or older with the informed consent of the child. When psychotropic medications are administered to a child fourteen years of age or older, the child's legal custodian shall be notified by the clinician.</p> <p>N.M. Stat. Ann. § 32A-6A-15.</p> <p><b>Under fourteen years:</b> May initiate and consent to an initial assessment with a clinician and for medically necessary early intervention service limited to verbal therapy for two calendar weeks or less.</p> <p>The informed consent of a child's legal custodian shall be required before treatment or habilitation, including psychotherapy or psychotropic medications, is administered to a child under fourteen years of age. N.M. Stat. Ann. § 32A-6A-14.</p>
<p><b>Other</b></p>	<p><b>Minors fifteen or older</b> can contract for annuities or for life insurance or health insurance for themselves or for another person the minor has an insurable interest in. There are limitations to this ability. See N.M. Stat. Ann. § 59A-18-7.</p>

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

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

**Who is a mandatory reporter of child abuse?** In New Mexico, every person, including a licensed physician; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child is a mandatory reporter. N.M. Stat. Ann. § 32A-4-3.

**How is “child” defined for purposes of New Mexico’s mandatory reporting law?** Pursuant to N.M. Stat. Ann. § 32A-1-4 a “child” is a person less eighteen years old.

**How is “abuse” defined?** “[A]bused child means a child:

- (1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child’s parent, guardian or custodian;
- (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child’s parent, guardian or custodian;
- (3) who has suffered sexual abuse or sexual exploitation inflicted by the child’s parent, guardian or custodian;
- (4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child’s life or health; or
- (5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child.” N.M. Stat. Ann. § 32A-4-2.

“[P]hysical abuse includes any case in which the child suffers strangulation or suffocation and any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

- (1) there is not a justifiable explanation for the condition or death;
- (2) the explanation given for the condition is at variance with the degree or nature of the condition;
- (3) the explanation given for the death is at variance with the nature of the death; or
- (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence.” N.M. Stat. Ann. § 32A-4-2.

“[S]exual abuse includes criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;” *Id.*

“[S]exual exploitation includes:

- (1) allowing, permitting or encouraging a child to engage in prostitution;

- (2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or
- (3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law.” N.M. Stat. Ann. § 32A-4-2.

**When must a mandatory reporter make a report?** Immediately. N.M. Stat. Ann. § 32A-4-3.

**What must be reported if I am required to report child abuse?** New Mexico statutes do not specify what must be reported.

**To whom must I make a report when I’m required to do so?** Reports must be made to: “(1) a local law enforcement agency; (2) the department; or (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.” N.M. Stat. Ann. § 32A-4-3.

6

**Must I report 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.

New Mexico does not have a statutory or common law duty to warn or protect.

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, New Mexico has the “Victim Counselor Confidentiality Act,” which protects the confidential communications of victims to their counselors with an exception for child abuse reporting. N. M. Stat. 31-25-3.

8

**Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in New Mexico?** New Mexico law does not directly address this question.

9

**Does New Mexico 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).