



# Minors' Privacy Toolkit

## North Carolina

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 North Carolina?** Under North Carolina Law, a minor is any person under eighteen years old. N.C. Gen. Stat. § 48A-2.

2

**How does emancipation work in North Carolina?** Any juvenile who is sixteen years or older may petition the court for a judicial decree of emancipation. N.C. Gen. Stat. § 7B-3500.

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect
N.C. Gen. Stat. § 7B-3507	To make contracts and conveyances, to sue and be sued, and to transact business as if petitioner were an adult.	The application of N.C. Gen. Stat. § 14-326.1 (relating to the obligation to support parents) or the petitioner's right to inherit property by intestate succession

3

**What laws in North Carolina inform a minor's right to consent to services?**

<b>Reproductive health</b>	<p>A minor of any age may give consent to a physician for prevention, diagnosis, and treatment of venereal disease (including HIV) and other communicable diseases that are required to be reported.</p> <p>A minor may also give consent for the prevention, diagnosis, and treatment of pregnancy, but not for an abortion or a sterilization operation. N.C. Gen. Stat. § 130A-135.</p>
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<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>No physician may perform an abortion on an unemancipated minor without the consent of the minor and either their parent, guardian, parent with whom they are living, or grandparent with whom they have been living for six months. A judicial bypass procedure is available. N.C. Gen. Stat. § 90-21.7. The parental consent requirement is waived if the court finds: (1) minor is mature and well-informed enough to make abortion decision on own; (2) it would be in minor’s best interests that parental consent not be required; or (3) minor is a rape or felonious incest victim. N.C. Gen. Stat. § 90-21.8. Parental consent requirement is also waived when a medical emergency requires an immediate abortion N.C. Gen. Stat. § 90-21.9.</p> <p>Note that except in the case of an emergency, all abortions in North Carolina are subject to “informed consent,” whereby at least seventy-two hours prior to the abortion a physician provides pregnant person with a wide range of information about the abortion procedure. See N.C. Gen. Stat. §§ 90-21.82-90-21.92.</p> <p><b>Note:</b> 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>In general, no physician may treat a minor without the consent of their parent or guardian, or someone standing in loco parentis. The exceptions are where the parent, guardian, or person standing in loco parentis cannot be located, where the identity of child is unknown and immediate treatment and the minor’s life is in danger, where effort to locate parent, guardian, or person standing in loco parentis would result in a delay that would seriously worsen physical condition of minor, or where parents refuse to consent to a procedure and need for immediate treatment is so apparent that the delay to obtain a court order would seriously worsen the child and physician obtains a second opinion from another physician. N.C. Gen. Stat. § 90-21.1. In general, no physician may perform a surgery on a minor without a second opinion, except in an emergency where it is impossible to contact another physician to obtain their opinion. N.C. Gen. Stat. § 90-21.3.</p> <p>However, any minor may give consent for medical services for the prevention, diagnosis and treatment of a “communicable disease” reportable under N.C. Gen. Stat. § 130A-135.</p>
<p><b>Mental health and chemical dependency</b></p>	<p>Any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis, and treatment of abuse of controlled substances or alcohol, and emotional disturbance. N.C. Gen. Stat. § 90-21.5.</p>

**4**

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

## 5

### **What are the child abuse mandatory reporting obligations in North Carolina?**

**Who is a mandatory reporter of child abuse?** In North Carolina any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, or has died of maltreatment is required to report that information to the director of the department of social services in the county where the juvenile resides or is found. N.C. Gen. Stat. § 7B-301.

**How is “juvenile” defined for purposes of North Carolina’s mandatory reporting law?** [Note: the term is “juvenile,” not “child,” under North Carolina law.] A “juvenile” is a person who has not reached their eighteenth birthday and is not married, emancipated, or a member of the U.S. Armed Forces. N.C. Gen. Stat. § 7B-101(14).

**How is “abuse” defined?** The North Carolina statutes define “Abused Juveniles” as any person under eighteen years old whose parent, guardian, custodian, or caretaker:

- Inflicts or allows a serious, nonaccidental physical injury to be inflicted
- Creates or allows a substantial risk of serious, nonaccidental physical injury to be created
- Uses or allows cruel or grossly inappropriate procedures or devices to modify behavior
- Commits, permits, or encourages commission of a violation of a number of sexual offense laws by, with, or upon child
- Creates or allows serious emotional damage to child. Serious emotional damage is evidenced by child’s severe anxiety, depression, withdrawal, or aggressive behavior
- Encourages, directs, or approves of delinquent acts involving moral turpitude committed by child or
- Commits or allows human trafficking or involuntary or sexual servitude to be committed against child

N.C. Gen. Stat. § 7B-101(1).

**When must a mandatory reporter make a report?** Every person or institution must report when they have “cause to suspect that any juvenile is abused, neglected, or dependent ... or has died as the result of maltreatment.” N.C. Gen. Stat. § 7B-301.

**What must be reported if I am required to report child abuse?** The report must include information as known to reporter, including name, age, and address of child; name and address of child’s parent, guardian, or caretaker; names and ages of other juveniles in the home; present whereabouts of child if not at home address; nature and extent of injury or condition resulting from abuse, neglect, or dependency; and any other information which person making report believes might be helpful in establishing need for protective services or court intervention. N.C. Gen. Stat. § 7B-301(a).

**To whom must I make a report when I’m required to do so?** The report must be made to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. N.C. Gen. Stat. § 7B-301(a).

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**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.

North Carolina case law holds that there is neither a duty to control the actions of a third party, nor to protect another from a third party. *McArdle v. Mission Hosp., Inc.*, 804 S.E. 2d 214 (2017). Along those lines, North Carolina does not impose a duty on a psychiatrist to warn third persons of potential harm. *Gregory v. Kilbride*, 565 S.E.2d 685 (2002). (There is an exception where a “mentally ill and dangerous person” has been involuntarily committed to an institution and is released to “wreak violence upon innocent third persons.” *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?** An “agent” of a rape crisis center or domestic violence program cannot disclose any information which agent acquired during provision of services to a victim and which was necessary to enable agent to render services. The survivor can waive the privilege. A court can compel disclosure under certain circumstances. N.C. Gen. Stat. § 8-53.12.

However, there is an exception to this privilege for child abuse mandatory reporting when the victim is under the age of sixteen. *Id.*

8

**Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in North Carolina?** North Carolina does not have a statute or case that directly addresses this issue. Note that in North Carolina attorney-client privilege is not waived if the third party is an agent of the client, even though generally the presence of third parties who are not agents waive privilege. See *Berens v. Berens*, 785 S.E.2d 733 (2014).

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**Does North Carolina 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).