



Minors' Privacy Toolkit

North Dakota

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 North Dakota? Under North Dakota law, a minor is a person under eighteen years old. N.D. Cent. Code § 14-10-01. An individual's minority status terminates upon marriage. N.D. Cent. Code § 14-09-20.

2

How does emancipation work in North Dakota? In North Dakota, there is no law or rule allowing a minor to seek emancipation. Parents retain "authority" over their children until the child is eighteen years old or married (with parental consent). N.D. Rev. Stat. § 14-09-20. North Dakota courts can appoint guardians for a child which terminates the parents' authority. *Id.*

3

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

Reproductive health	<p>A physician or other health care provider may provide the following services to a minor without parent or guardian consent:</p> <ul style="list-style-type: none">• Pregnancy testing and pain management• Prenatal care in the first trimester• A single visit in the second or third trimester <p>A physician or other health care provider may provide prenatal care beyond the first trimester of pregnancy or in addition to the single prenatal care visit in the second or third trimester if, after a good-faith effort, the physician or other health care provider is unable to contact the minor's parent or guardian.</p> <p>This section does not authorize a minor to consent to abortion or otherwise supersede the requirements of North Dakota's Abortion Control Act at N.D. Cent. Code § 14-02.1.</p> <p>N.D. Cent. Code § 14-09-19(1).</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.

<p>Reproductive health</p>	<p>If a minor requests confidential services, the physician or other health care professional shall encourage minor to involve their parents or guardian. A physician, or other health care professional or facility, may not be compelled against their best judgment to treat a minor based on minor’s own consent. N.D. Cent. Code § 14-09-19(2).</p> <p>A physician or other health care professional who provides pregnancy care services to a minor may inform the parent or guardian of the minor of any pregnancy care services given or needed if physician or other health care professional discusses with minor the reasons for informing parent or guardian prior to disclosure and, in the judgment of the physician or other health care professional: (a) Failure to inform parent or guardian would seriously jeopardize health of minor or their unborn child; (b) Surgery or hospitalization is needed; or (c) Informing parent or guardian would benefit health of minor or their unborn child. N.D. Cent. Code § 14-09-19(3).</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>Sexually transmitted infections and substance abuse</p>	<p>Any person age of fourteen years or older may contract for and receive examination, care, or treatment for sexually transmitted disease or substance use disorder without permission, authority, or consent of a parent or guardian. N.D. Cent. Code § 14-10-17.</p>
<p>Other</p>	<p>Minor’s emergency care (including cases of sexual assault). A minor may contract for and receive emergency examination, care, or treatment in a life-threatening situation without the consent of their parent or guardian. If a minor has an emergency medical condition or potential therefore, consent to emergency examination, care, or treatment of minor is implied if reasonable steps to contact minor’s parent or guardian are unsuccessful. A minor may not withhold consent to emergency examination, care, or treatment. A physician or other health care provider may provide emergency medical care or forensic services to a minor who is a victim of sexual assault without consent of minor’s parent or guardian. Reasonable steps must be made to notify minor’s parent or guardian of care provided. N.D. Cent. Code § 14-10-17.1.</p> <p>Blood donation. An individual who is at least sixteen years old may donate blood on a voluntary and non-compensatory basis without obtaining consent of their parent or guardian. Any notification of a medical condition must be mailed to donor and donor’s parent or guardian. N.D. Cent. Code § 14-10-18.1.</p>

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

What are the child abuse mandatory reporting obligations in North Dakota?

Who is a mandatory reporter of child abuse? North Dakota has a long list of required reporters including:

- Dental professionals
- Mental health professionals
- Education professionals
- Foster parents
- Law enforcement officers
- Clergy and religious practitioners (unless knowledge is derived from information received in their capacity as a spiritual advisor)

Any person who has knowledge of or reasonable cause to suspect that a child is abused or neglected based on images of sexual conduct by a child discovered on a workplace computer shall report the circumstances. N.D. Cent. Code § 50-25.1-03(1).

How is “child” defined for purposes of North Dakota’s mandatory reporting law? An “abused child” is an individual under the age of eighteen years old who is suffering from abuse or sexual abuse caused by a person responsible for their welfare. N.D. Cent. Code § 50-25.1-02(3).

How is “abuse” defined? N.D. Cent. Code § 14-09-22 defines “abuse of child” as when a person “willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury” on a child.

“Sexually abused child” means an individual under the age of eighteen years who is subjected by a person responsible for the child’s welfare, or by any individual who acts in violation of sex offenses. N.D. Cent. Code § 50-25.1-02(3).

“Neglected child” “means a child who, due to the action or inaction of a person responsible for the child’s welfare:

- a. Is without proper care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child’s welfare;
- b. Has been placed for care or adoption in violation of law;
- c. Has been abandoned;
- d. Is without proper care, control, or education as required by law, or other care and control necessary for the child’s well-being because of the physical, mental, emotional, or other illness or disability of a person responsible for the child’s welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child’s welfare;

- e. Is in need of treatment and a person responsible for the child’s welfare has refused to participate in treatment as ordered by the juvenile court;
- f. Was subject to prenatal exposure to chronic or severe use of alcohol or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner;
- g. Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia “as prohibited by section 19-03.1-22.2”; or
- h. Is a victim of human trafficking as defined in title 12.1.”

N.D. Cent. Code § 50-25.1-02(14).

When must a mandatory reporter make a report? Immediately, if the knowledge or suspicion is derived from information received by that person in that person’s official or professional capacity. N.D. Cent. Code § 50-25.1-03(3).

What must be reported if I am required to report child abuse? Reports may be oral or written. Oral reports must be followed by written reports within forty-eight hours if requested by the department or the department’s designee. A requested written report must include information specifically sought by the department if the reporter possesses or has reasonable access to that information. N.D. Cent. Code § 50-25.1-04.

To whom must I make a mandated report when I’m required to do so? Reports are to be made to the department of human services or its designee. N.D. Cent. Code § 50-25.1-04.

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.

In North Dakota, mental health professionals and physicians are allowed, but not required, to disclose confidential communications if a patient expresses an intent to engage in conduct likely to result in imminent death or serious bodily injury to the patient or another individual. N.D. Evidence Rule § 503(d)(5).

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. “All agents, employees, and volunteers” of a domestic violence or sexual assault program shall maintain the confidentiality of the “name, address, telephone number, personally identifying information, and case file or history of any client receiving services.” N.D. Cent. Code 14-07.1-18(1). This information may not be disclosed unless the client consents to its disclosure. The privilege does not apply to child abuse mandatory reporting. N.D. Cent. Code § 50-25.1-10.

8

Does a parent or guardian's presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in North Dakota? North Dakota law does not address this question.

9

Does North Dakota 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).