



Oregon

Minors' Privacy Toolkit

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 Oregon? Under Oregon law, a minor is a person under the age of eighteen years. Or. Rev. Stat. §§ 491B.550(3); 109.510.

2

How does emancipation work in Oregon? Under Oregon law, emancipation grants minors certain rights of majority. Or. Rev. Stat. § 419B.550(2). A minor must be at least sixteen years old for a court to enter a judgement of emancipation. Or. Rev. Stat. § 419B.558(1).

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect
Or. Rev. Stat. § 419B.552.	Contracting and conveying; establishing a residence; suing and being sued; making a will; criminal law purposes.	Requirements for purchasing alcoholic liquor; getting a marriage license; citizen status.

3

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

Reproductive health	<p>Any age: Birth control info and services from physician, physician assistant or nurse practitioner; consent to sexually transmitted infections-related hospital, medical, or surgical care. Or. Rev. Stat. §§ 109.640(1); 109.610.</p> <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>
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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.

General medical	<p>Age fifteen or older: Hospital care, and medical, dental, or surgical diagnosis or treatment; and diagnosis and treatment by an optometrist, <i>except</i> may not consent if getting contact lenses for the first time.</p> <p>Note: A hospital, physician, physician assistant, nurse practitioner, dentist, or optometrist <i>may</i> advise a parent or legal guardian of a minor of the care, diagnosis, or treatment of the minor or the need for any treatment of the minor, without the consent of the minor. Or. Rev. Stat. §§ 109.640(2); 109.650.</p>
Mental health and chemical dependency	<p>Minors fourteen or older: Outpatient diagnosis or treatment of mental or emotional disorders or chemical dependency, excluding methadone maintenance, by a physician or physician assistant, psychologist, nurse practitioner, clinical social worker, professional counselor, or marriage and family therapist. Providers expected to involve parents by end of treatment unless parent refuses; clinically inappropriate; identified sexual assault by parent; or minor emancipated or separated from parent for 90 days. Further, provider <i>may</i> advise parents or guardians when clinically appropriate and will serve the best interests of the minor because of deterioration, risk of suicide, or need for detoxification in a facility. Or. Rev. Stat. §§ 109.675; 109.680.</p>
Other	<p>Minors of any age: If unemancipated, unmarried, living apart from any parent or legal guardian, and the custodial parent, or pregnant and expects to be custodial parent, contract for a residential dwelling unit and utility services.</p> <p>Minors sixteen or older: May rent an apartment and contract for utilities if not married or living with parent or guardian. Or. Rev. Stat. § 109.697.</p>

4

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

5

What are the child abuse mandatory reporting obligations in Oregon?

Who is a mandatory reporter of child abuse? In Oregon, there is a long list of mandatory reporters. (See Or. Rev. Stat. § 419B.005 for a complete list.) Some of the most relevant reporters include:

- Attorneys (with exceptions)
- Social workers
- Mental health professionals (with exceptions)
- Health care providers
- School employees

Please note: Or. Rev. Stat. § 419B.005(bb) identifies employees of public or private organizations providing child-related services or activities are mandatory reporters, EXCEPT for community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking. Or. Rev. Stat. § 491B.005(bb)(B).

How is “child” defined for purposes of Oregon’s mandatory reporting law? A child is an unmarried person who is under eighteen years old or under twenty-one years old and residing in or receiving care or services at a child-caring agency as that term is defined in Or. Rev. Stat. § 418.205. Or. Rev. Stat. § 419B.005(2).

How is “abuse” defined? Abuse means:

- Any assault and any physical injury which has been caused by other than accidental means, including an injury which appears to vary from the explanation given of the injury. Or. Rev. Stat. § 491B.005(1)(a)(A). Please note “physical injury” is defined elsewhere as “impairment of physical condition or substantial pain.” Or. Rev. Stat. § 161.015(7).
- Any mental injury which includes only observable and substantial impairment of the child’s mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child. Or. Rev. Stat. § 491B.005(1)(a)(B).
- Rape, sodomy, unlawful sexual penetration, and incest. Or. Rev. Stat. § 491B.005(1)(a)(C).
- Sexual abuse. Or. Rev. Stat. § 491B.005(1)(a)(D).
- Sexual exploitation, including contributing to the sexual delinquency of a minor (see scope in statute) or allowing, etc., a child to engage in prostitution or a commercial sex act or solicitation. Or. Rev. Stat. § 491B.005(1)(a)(E).
- Negligent treatment or maltreatment. Or. Rev. Stat. § 491B.005(1)(a)(F).
- Subjecting a child to a substantial risk of harm. Or. Rev. Stat. § 491B.005(1)(a)(G).
- Buying or selling a person under eighteen years old. Or. Rev. Stat. § 491B.005(1)(a)(H).
- Permitting a person under eighteen years old to enter or remain in or upon premises where methamphetamines are being manufactured. Or. Rev. Stat. § 491B.005(1)(a)(I).
- Unlawful exposure to a controlled substance that subjects a child to a substantial risk of harm. Or. Rev. Stat. § 419B.005(1)(a)(J).

When must a mandatory reporter make a report? Any mandatory reporter having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the reporter comes in contact has abused a child shall immediately report or cause a report to be made. A psychiatrist, psychologist, member of the clergy, attorney, or guardian ad litem is not required to report if the communication is privileged. Or. Rev. Stat. § 419B.010.

What must be reported if I am required to report child abuse? A report must include, if known:

- Names and addresses of child and their parents or other persons responsible for their care
- Child’s age
- Nature and extent of abuse, including evidence of previous abuse
- Explanation given for abuse
- Any other information that person making report believes might be helpful in establishing cause of abuse and identity of perpetrator. Or. Rev. Stat. § 419B.015(1)(a).

To whom must I make a report when I'm required to do so? An oral report must be made by telephone or otherwise to the local office of the Department of Human Services, to a designee of that Department, or to a law enforcement agency within the county where the person making the report is located at the time of the contact. Or. Rev. Stat. § 419B.015(1)(a).

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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.

Oregon provides a *permissive* duty to warn to health care providers to report to the appropriate authority information if in the judgment of the health care service provider there is an indication of a clear and immediate danger to others or to society. Or. Rev. Stat. § 179.505(12).

Psychotherapists, regulated social workers, and victim-advocates *may* report to another person if in the professional judgment of such person there is a clear and serious intent to commit a crime, involving physical injury, a threat to the physical safety of any person, sexual abuse or death or aggravated animal abuse and there is a danger that the crime will be committed. This section does not create a duty to report any communications to any person. Or. Rev. Stat. § 40.252, Rule 504-5(1).

Certified school counselors generally cannot disclose communications made to them by students without consent except "in the event that the student's condition presents a clear and imminent danger to the student or to others, the counselor shall report this fact to an appropriate responsible authority or take such other emergency measures as the situation demands." Or. Rev. Stat. § 40.245(2), Rule 504-3.

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? Oregon law establishes confidential and privileged communications for certified advocates. Or. Rev. Stat. §§ 147.600; 40.264.

8

Does a parent or guardian's presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Oregon? Under Oregon's certified advocate-victim privilege law, persons present at the time the communication is made who are present to further the interests of the victim or are reasonably necessary for the transmission of the communication may be present without waiving the privilege. Or. Rev. Stat. § 40.264(b).

9

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

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).