



Minors' Privacy Toolkit

Pennsylvania

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 Pennsylvania? In Pennsylvania, a minor is an individual under the age of eighteen. 23 Pa. Cons. Stat. 23. § 5501.

2

How does emancipation work in Pennsylvania? Pennsylvania does not have a specific emancipation statute. The practice of granting judicial decrees of emancipation has grown out of Pennsylvania case law describing circumstances under which a court may find that a minor is incapacitated. Minors may become emancipated by marriage, court order, attaining economic self-support, obtaining an educational degree or diploma, or participating in military service.

“Emancipation is a question of fact to be determined by the circumstances presented in each case and that the criterion is whether the child is dependent upon his/her parents for support or is independent of such support.” *Maurer v. Maurer*, 382 Pa. Super. 468, 555 A.2d 1294 (1989). See *Berks County Children & Youth Serv. v. Rowan*, 631 A.2d 615 (Pa. Super. 1993); *Trosky v. Mann*, 581 A.2d 177 (Pa. Super. 1990).

3

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

General medical	<p>A minor who has graduated from high school, has been pregnant, or has married can consent to medical, dental, and health services without the consent of a parent or legal guardian. 35 Pa. Cons. Stat. § 10101.</p> <p>Any minor may consent to testing and treatment for “reportable diseases” under the Disease Prevention and Control Law of 1955. 35 Pa. Cons. Stat. § 10103. “Reportable diseases” are diseases declared reportable by either state regulation or the state Secretary of Health. 35 Pa. Cons. Stat. § 521.2(k).</p> <p>In an emergency situation, a physician can provide medical, dental, and health services to minors of any age without the consent of the parent or legal guardian where an attempt to secure consent would increase risk to the minor's life or health. 35 Pa. Cons. Stat. §10104.</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>A minor can obtain contraception without parental consent or involvement. A minor can consent to testing for pregnancy, and medical and health services to treat pregnancy, including prenatal care. Pa. Cons. Stat. § 10103.</p> <p>The above does not, however, include abortion. When a minor requests an abortion, the provider must obtain the informed written consent of the minor and one or their parents or legal guardians. If neither parent nor legal guardian is available within a reasonable period of time, the consent of any adult person standing in loco parentis is sufficient. 18 Pa. Stat. and Cons. Stat. Ann § 3206(b). Emancipated minors can obtain abortions without consent of parent/guardian. 18 Pa. Stat. and Cons. Stat. Ann § 3206(a). The statute also allows judicial authorization. Pa. Stat. and Cons. Stat. Ann § 3206(c).</p> <p>An abortion can be performed on a minor without parental consent in a medical emergency. 18 Pa. Stat. and Cons. Stat. Ann. §§ 3204(b); 3205(a); 3206(a); 3209(c).</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>Mental health and chemical dependency</p>	<p>A minor who is fourteen years or older who believes they need treatment and substantially understands the nature of the treatment may consent to voluntary inpatient mental health examination and treatment. 50 Pa. Cons. Stat. §§ 7103; 7201. Consent must be voluntary and in writing. 55 Pa. Code § 5100.73(c). Facility must promptly notify the minor’s parent, guardian or person standing in loco parentis that the minor has been admitted. Pa. Cons. Stat. § 7204. The parent may file an objection, in which case a hearing is held within seventy-two hours. 50 Pa. Cons. Stat. § 7204; Mental Health Manual, 55 Pa Code § 5100.74.</p> <p>A parent or legal guardian can consent to inpatient mental health treatment for minors fourteen to seventeen years of age on the recommendation of a physician who has examined the minor and over the objections of the minor. 35 Pa. Cons. Stat. § 10101.1(b)(1).</p> <p>When a minor objects, the minor can have the commitment reviewed by the court. 35 Pa. Cons. Stat. § 10101.1(b)(7) and (9).</p> <p>A minor under age fourteen must have a parent or legal guardian consent to voluntary inpatient mental health examination and treatment for the minor. 50 Pa. Cons. Stat. §§ 7201, 7203. Mental Health Manual, 55 Pa. Code §§ 5100.71(a) and (b), 5100.73(a)-(c); 35 Pa. Cons. Stat. § 10101.1(b)(1).</p> <p>A minor who is fourteen years of age or older may consent to outpatient mental health examination and treatment. 35 Pa. Cons. Stat. § 10101(a)(1).</p> <p>A minor who “suffers from the use of a controlled or harmful substance” can consent to medical care and counseling related to the diagnosis or treatment of a substance abuse problem. Drug and Alcohol Abuse Control Act, 71 Pa. Cons. Stat. § 1690.112. The physician may, but is not obligated to, inform the parents or legal guardian.</p>

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

What are the child abuse mandatory reporting obligations in Pennsylvania?

Who is a mandatory reporter of child abuse/neglect? Pennsylvania has a long list of mandatory reporters (see 23 Pa. Stat. and Cons. Stat. Ann. § 6311 for a complete list). The most relevant include: school employees, health care facility employees, child care employees, clergy, social service agency employees, and attorneys “affiliated with an agency, institution, organization or other entity, including a school or regularly established religious organization that is responsible for the care, supervision, guidance or control of children.” 23 Pa. Stat. and Cons. Stat. Ann. § 6311.

- (A) How is “child” defined for purposes of Pennsylvania’s mandatory reporting law? A child is an individual under the age of eighteen years of age. 23 Pa. Stat. and Cons. Stat. Ann. § 6303.
- (B) How is “abuse” defined? In Pennsylvania, child abuse is defined as “intentionally, knowingly or recklessly” harming a child in specified ways, including bodily injury, mental injury, sexual abuse, trafficking, or exploitation, serious physical neglect, and other harms such as biting and kicking. For the complete definition, see 23 Pa. Stat. and Cons. Stat. Ann. § 6303.
- (C) When must a mandatory reporter make a report? Mandated reporters must report immediately, either orally or in writing. Oral reports of suspected child abuse must be followed by a written report within forty-eight hours. 23 Pa. Stat. and Cons. Stat. Ann. § 6313(a).
- (D) What must be reported if I am required to report child abuse? A written report of suspected child abuse, which may be submitted electronically, shall include the following information, if known:
- Names and addresses of child, child’s parents and any other person responsible for child’s welfare
 - Where suspected abuse occurred
 - Age and sex of each subject of the report
 - Nature and extent of suspected child abuse, including any evidence of prior abuse to child or any sibling
 - Name and relationship of each individual responsible for causing the suspected abuse and any evidence of prior abuse by each individual
 - Family composition
 - Source of the report
 - Name, telephone number, and e-mail address of person making the report
 - Actions taken by the person making the report)
 - Any other information required by Federal law or regulation.

23 Pa. Stat. and Cons. Stat. Ann. § 6313(b).

To whom must I make a report when I’m required to do so? A mandatory report must be made to the appropriate department at the local county agency or law enforcement. 23 Pa. Stat. and Cons. Stat. Ann. § 6312.

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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.

Mental health professionals must report when a patient presents a “serious danger of violence to a third party.” This duty is imposed by case law. *Emerich v. Philadelphia Ctr. for Human Development, Inc.* 720 A2d 1032, 1037-8 (1998).

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? A sexual assault counselor may not disclose a victim’s confidential communications to the counselor or consent to be examined in any court or criminal proceeding without the written consent of the victim. Only the victim can waive the privilege and the waiver must be in writing. 23 Pa. Stat. and Cons. Stat. Ann. § 6116; 42 Pa. Stat. and Cons. Stat. Ann. § 5945.1.

No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim’s confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding. 42 Pa. Stat. and Cons. Stat. Ann. §§ 5944.1, 5945.2, 5952, 5929; 63 Pa. Cons. Stat. § 1725.7.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Pennsylvania? “No co-participant who is present during counseling may disclose a victim’s confidential communication made during the counseling session nor consent to be examined in any civil or criminal proceeding without the written consent of the victim.” 42 Pa. Stat. and Cons. Stat. Ann. § 5945.1(b)(2).

9

Does Pennsylvania 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).