



Minors' Privacy Toolkit

Puerto Rico

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 Puerto Rico? In Puerto Rico, majority begins at age of twenty-one. P.R. Laws Ann. tit. 31, § 917.

2

How does emancipation work in Puerto Rico? The law recognizes four types of emancipation: (1) Emancipation through grant by a parent at the age of eighteen (P.R. Laws Ann. tit. 31, § 911); (2) Emancipation by marriage (P.R. Laws Ann. tit. 31, § 931); (3) Judicial emancipation upon petition by the minor or a relative (P.R. Laws Ann. tit. 31, § 912); and (4) Emancipation by reason of having attained the age of majority (P.R. Laws Ann. tit. 31, § 901. When the Court of First Instance decrees the emancipation of the minor, it shall order that they be considered as of age for all legal effects, without exception. P.R. Laws Ann. tit. 31, § 955.

3

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

General medical	Age eighteen and older: Any minor who is eighteen years of age or older is emancipated for the purpose of receiving medical services and treatment in emergency rooms, and in the case of minors of eighteen years of age or older who are parents, they may authorize medical services and treatment for their children in emergency rooms. P.R. Laws Ann. tit. 31, § 915.
Reproductive health	STD treatment: Any health professional or representative, clinic, and hospital who examines or treats a minor under twenty-one years of age for a sexually transmitted disease without first obtaining the consent of the parents or persons legally called upon to consent, is relieved from civil liability. P.R. Laws Ann. tit. 24, §§ 571, 577. 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.

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.

Mental health and chemical dependency

Age eighteen and older: A minor who is eighteen years old or older is considered an adult for purposes of mental health services, which include services for substance-related disorders. P.R. Laws Ann. tit. 24, §§ 6152b(f).

Age fourteen and older: Every minor fourteen years and older, has the right to request counseling or psychotherapy and to receive mental healthcare treatment, up to a maximum of six sessions, without their parents' consent. P.R. Laws Ann. tit. 24, § 6161. In cases of counseling and treatment for substance-related disorders, the initial term shall not exceed seven sessions. P.R. Laws Ann. tit. 24, § 6158e(c). Counseling or treatment shall be kept confidential until the sessions have been completed unless the mental health professional determines that the minor is at risk of inflicting harm upon themselves or others or damaging property. P.R. Laws Ann. tit. 24, § 6161. The minor shall be immediately notified when such notice is given. *Id.*

4

As an OVW-funded victim service provider, why do I need to know the child abuse mandatory reporting obligations in Puerto Rico? 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, a victim service provider who receives VAWA funding may only report child abuse or neglect if a statute or case law *requires* the report. *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 Puerto Rico.

5

What are the child abuse mandatory reporting obligations in Puerto Rico?

Who is a mandatory reporter of child abuse/neglect? Puerto Rico has a list of persons who must immediately report when there is known or suspected abuse, institutional abuse, neglect, and/or institutional neglect of a minor. The list includes, in relevant part:

- Professionals or public officials, public, private, and privatized entities which learn or suspect while in their professional capacity
- professionals in the fields of health, the system of justice, education, social work, public order
- persons who administer or work in caregiving institutions or centers that provide care services for twenty-four hours a day or part thereof, or in rehabilitation institutions and centers for minors, or in foster homes

See P.R. Laws Ann. tit. 8, § 446.

How is “child” defined for purposes of Puerto Rico’s mandatory reporting law? For purposes of mandatory reporting law, “minor” means any person who is not yet eighteen years old. P.R. Laws Ann. tit. 8, § 444(v).

How is “abuse” defined? Puerto Rico defines abuse as an act by a “person in charge of a minor” that puts the minor at risk of suffering “damage or harm” to their health or physical, mental, and/or emotional integrity, including sexual abuse. Minors are also considered to be victims of abuse if

their parent or person responsible for them has done the conduct described above, or has engaged in acts that constitute domestic violence in the presence of minors. P.R. Laws Ann. tit. 8, § 444(s).

There are also definitions of institutional abuse (P.R. Laws Ann. tit. 8, § 444(t)), neglect (P.R. Laws Ann. tit. 8, § 444(w)), and institutional neglect (P.R. Laws Ann. tit. 8, § 444(x)).

- (A) When must a mandatory reporter make a report? Reports must be made immediately when there is knowledge or suspicion of abuse, institutional abuse, neglect, and/or institutional neglect of a minor. P.R. Laws Ann. tit. 8, § 446.
- (B) What must be reported if I am required to report child abuse? Information that must be provided is not identified in the statutes.
- (C) Mandatory reporters are required to fill out a form provided by the Department of the Family of the Commonwealth of Puerto Rico no later than 48 hours after reporting the situation. P.R. Laws Ann. tit. 8, § 446.
- (D) To whom must I make a report when I'm required to do so? Reporters must report to the Abuse Hotline for Situations of Abuse, Institutional Abuse, Neglect, and Institutional Neglect, the Puerto Rico Police, or the local office of the Department of the Family of the Commonwealth of Puerto Rico.

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.

When a person communicates to a physician, psychiatrist, psychologist, social worker, professional counselor, or other healthcare professional their intention to commit suicide or self-mutilation, or when such professional believes, based on the person's behavior, that said person might attempt to conduct such actions, the physician, psychiatrist, psychologist, social worker, professional counselor, or other healthcare professional shall have the duty to warn a family member of the possibility of an attempt to carry out said act. P.R. Laws Ann. tit. 24, § 6153r(1).

Similarly, when a person informs a physician, psychiatrist, psychologist, social worker, professional counselor, or any other healthcare professional of a threat to physically harm a third party, the physician, psychiatrist, psychologist, social worker, professional counselor, or healthcare professional shall have the duty to warn said third party of the possibility of a threat, when they may be reasonably identified. P.R. Laws Ann. tit. 24, § 6153q(1).

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. “Any victim of a crime, whether or not a party to the action, has the privilege to refuse to disclose or to prevent another from disclosing a confidential communication between the victim” and an employee or supervised volunteer of a help and counseling center

that offers treatment and help to crime victims, “if any one of them reasonably believed such communication to be necessary for the treatment and help required. The privilege may be claimed not only by the holder thereof, but also by a person authorized by the victim, a legal counsel or by the counselor who received the communication.” P.R. Laws Ann. tit. 32, Ap. IV, § 26-A(B).

Further, all communications between a victim of domestic violence and the Women’s Advocate Office, or any other public entity or body which renders services to victims of domestic abuse, shall be privileged and confidential in conjunction with Rule 26-A of the Rules of Evidence of Puerto Rico and the Bill of Rights of Victims and Witnesses of Crime. P.R. Laws Ann. tit. 8, § 652.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Puerto Rico? Possibly. See P.R. Laws Ann. tit. 32, Rule 33 (providing that the presence of third parties can waive communication’s privilege).

9

Does Puerto Rico 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).