



Minors' Privacy Toolkit

South 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.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 South Carolina? A “child” is a person under the age of eighteen. S.C. Code Ann. § 63-1-40(1). A “minor” is a person under eighteen years old except in the sale of alcoholic beverages. S.C. Code Ann. § 15-1-320.

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How does emancipation work in South Carolina? There is no statute that defines the emancipation process in South Carolina. However, the existence of emancipated minors is acknowledged in multiple places in South Carolina's laws. For example, the Child Protection and Permanency chapter claims family court jurisdiction over children until they become “eighteen years of age, unless emancipated earlier.” S.C. Code Ann. § 63-7-2510. The South Carolina Probate code defines a minor as “a person who is under eighteen years of age, excluding a person under the age of eighteen who is married or emancipated as decreed by the family court.” S.C. Code Ann. § 62-1-201(27). The Abortions chapter requires parental consent or judicial bypass unless “the minor is emancipated” and defines an emancipated minor as “a minor who is or has been married or has by court order been freed from the care, custody, and control of her parents.” S.C. Code Ann. § 44-41-31(A)(2) and S.C. Code Ann. § 44-41-10(n).

3

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

Abortion	<p>Minors age seventeen and older may consent for abortion. Minors under age seventeen who are unmarried require the consent of at least one parent, grandparent, or guardian unless a medical emergency or a case of incest. S.C. Code Ann. § 44-41-31. Judicial bypass is available for minors. S.C. Code Ann. § 44-41-33.</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 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.

Healthcare	<p>Minors sixteen years and older may consent to any health service from a person authorized by law to perform that service. S.C. Code Ann. § 63-5-340.</p> <p>Minors of any age may receive health services of any kind when “such services are deemed necessary” by the person authorized by law to perform the service. If this service involves an operation, it may be performed “only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.” S.C. Code Ann. § 63-5-350.</p> <p>Any minor who has been married or has borne a child may consent to health services for the child. S.C. Code Ann. § 63-5-360.</p>
Mental health services	<p>Minors sixteen or older may admit themselves for inpatient mental health treatment. S.C. Code Ann. § 44-24-20.</p>

4

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

5

What are the child abuse mandatory reporting obligations in South Carolina?

Who is a mandatory reporter of child abuse? S.C. Code Ann. § 63-7-310 contains a long list, including:

- Medical personnel including emergency medical services
- Member of the clergy, Christian Science practitioner, religious healer
- School employees
- Social or public assistance workers
- Law or government workers

How is “child” defined for purposes of the mandatory reporting law? “Child” means a person under the age of eighteen. S.C. Code Ann. § 63-7-20.

How is “abuse” defined? “Child abuse or neglect” or “harm” occurs when a parent, guardian, or other person responsible for child’s welfare does any of the following to the child:

- Inflicts or allows physical or mental injury, or engages in acts or omissions which present a substantial risk of physical or mental injury, including injuries sustained as a result of excessive corporal punishment
- Commits or allows a sexual offense or engages in acts or omissions that present a substantial risk that a sexual offense would be committed
- Fails to supply adequate food, clothing, shelter, or education as required, supervision appropriate to child’s age and development, or health care
- Encourages, condones, or approves the commission of delinquent acts including, but not limited to, sexual trafficking or exploitation.

See S.C. Code Ann. § 63-7-20.

When must a mandatory reporter make a report? A report must be made when someone, in their professional capacity, received information that gives them reason to believe a child has been or may be abused or neglected. S.C. Code Ann. § 63-7-310(A). No time frame for the report is specified.

What must be reported if I am required to report child abuse? No particular information is specified in the mandatory reporting statute.

To whom must I make a report when I'm required to do so? Reports should be made to the county department of social services or to a law enforcement agency in the county where the child resides or is found. S.C. Code Ann. § 63-7-310.

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.

South Carolina's Supreme Court has recognized that when a therapist "has the ability to monitor, supervise, and control an individual's conduct," a special relationship that gives rise to "a common law duty to warn potential victims of the individual's dangerous conduct" may exist. *Bishop v. South Carolina Dep't. of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). "This duty to warn arises when the individual has made a specific threat of harm directed at a specific individual." *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 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? No, there is no privilege for domestic violence and sexual assault advocates in South Carolina.

8

Will having a parent or guardian present during an otherwise privileged communication in South Carolina waive that privilege? No, there is no privilege for domestic violence and sexual assault advocates in South Carolina.

9

Does South Carolina have a parent-child privilege? No.

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).

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