



Minors' Privacy Toolkit

South 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 South Dakota? A minor is a person under eighteen years old. The age is calculated from the first minute of the day the person is born to the same minute of the corresponding day completing the period of minority. S.D. Codified Laws § 26-1-1.

2

How does emancipation work in South Dakota? There are two ways a minor can seek emancipation under South Dakota law. One is by express agreement of their parents under S.D. Codified Laws § 25-5-19; the other is through the minor's petition under S.D. Codified Laws § 25-5-26. Minors also become emancipated by marrying or through active military service. S.D. Codified Laws § 25-5-24. Emancipated minors are considered over the age of majority for these purposes: Consent to medical, chiropractic, optometric, dental, or psychiatric care; capacity to enter into binding contract; capacity to sue and be sued; right to support by parents; establishing own residence; buying or selling real property; ending vicarious liability of minor's parents or guardian for minor's torts (exceptions apply); and enrolling in school or college. See S.D. Codified Laws § 25-5-25.

3

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

Abortion	Unemancipated minors may not consent to abortion services until notice has been given to their parent or guardian, or the person entitled to that notice certifies in writing that they have been notified (and the signature is notarized), or in an emergency (though notice must be given within 24 hours of the emergency abortion). S.D. Codified Laws § 34-23A-7. 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.
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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.

Drug and alcohol treatment	Application for voluntary treatment by minors allowed. S.D. Codified Laws § 34-20A-50
Minor's consent to health services	Minors may consent to treatment of "venereal disease including prophylactic treatment for exposure." S.D. Codified Laws § 34-23-16.
Blood donation	"Any person of the age of sixteen years may donate blood if the potential donor obtains the written consent of a parent or guardian. Any person of the age of seventeen years or over may donate blood without obtaining the consent of a parent or guardian. However, no person may take blood for donation from any person of the age of seventeen if the parent or guardian of such potential donor specifically requests of the person taking the blood that such donation be prohibited." S.D. Codified Laws § 26-2-7.

4

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

5

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

Who is a mandatory reporter of child abuse? S.D. Codified Laws § 26-8A-3 includes these persons in their list of those "required to report child abuse or neglected child:"

- Physician, dentist, doctor of osteopathy, hospital intern or resident, nurse
- Mental health professional or counselor, psychologist, social worker
- Law enforcement officer
- Teacher, school counselor, school official
- Employee or volunteer of a domestic abuse shelter
- Employee or volunteer of a child advocacy organization or child welfare service provider

How is "child" defined for purposes of the mandatory reporting law? "A child is any person under the age of eighteen years." S.D. Codified Laws § 26-10-28.

How is "abuse" defined? In South Dakota, an "abused or neglected child" is one whose parent, guardian, or custodian has abandoned them or subjected them to mistreatment or abuse, who lacks proper parental care, who is threatened with substantial harm, who has sustained an emotional or physical injury, who was sexually abused, or who suffered other defined harms from their parent, guardian, or caregiver. See S.D. Codified Laws § 26-8A-2.

When must a mandatory reporter make a report? A mandatory report must be made immediately. S.D. Codified Laws § 26-8A-8.

What must be reported if I am required to report child abuse? A report made to the Department of Social Services pursuant to § 26-8A-8 must include the name, address, date and place of birth of

the child, the name and address of the child’s parents, guardian, custodian, or responsible persons, the date of the report, and the suspected or proven instances of child abuse or neglect. S.D. Codified Laws § 26-8A-10.

To whom must I make a report when I’m required to do so? Generally, a report must be made to a state’s attorney of the county in which the child resides or is present, the Department of Social Services, or law enforcement officers. S.D. Codified Laws § 26-8A-8.

School personnel must report to the school principal, school superintendent or designee. S.D. Codified Laws § 26-8A-7.

Hospital personnel must report to the person in charge of the institution or their designee. S.D. Codified Laws § 26-8A-6.

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 Dakota has not defined any general requirement for mental health professionals to warn third parties about threats of harm made by patients. South Dakota courts have, however, recognized a general common-law duty to control or warn based on a “special relationship,” the same theory underlying Tarasoff and the corresponding cases in other states. See, e.g., *Kirlin v. Halverson*, 758 N.W.2d 436 (S.D. 2008).

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? South Dakota requires domestic violence and sexual assault programs receiving state funding to keep communications with victims confidential. S.D. Codified Laws § 25-10-28. South Dakota affords statutory privilege only to certain licensed mental health professionals (licensed certified social worker, social worker, social work associate, licensed professional counselor, or licensed professional mental health counselor). S.D. Codified Laws §§ 36-26-30, 36-32-78. Physician and psychotherapist-patient privilege, spousal privilege, elementary or secondary school counselor and student privilege, and social worker-client privilege may not be claimed in a child abuse case. S.D. Codified Laws § 26-8A-15.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in South Dakota? South Dakota does not have privilege for communications between victims and advocates.

9

Does South Dakota have a privilege that protects the privacy of communication between a parent and a child? 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).