



# Minors' Privacy Toolkit

## Tennessee

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.<sup>1</sup> 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](mailto:TA@victimrights.org).

1

**Who is a "minor" in Tennessee?** Under Tennessee law, a minor is a person under the age of eighteen years old. Tenn. Code Ann. § 1-3-105.

2

**How does emancipation work in Tennessee?** Under Tennessee law, emancipation is referred to as "removal of the disability of minors." A minor may not file the removal of disability petition on their own behalf but must have someone over eighteen file as "next friend." The court's removal of the disability may enable the minor to do a particular act(s), or it may be general and empower the minor to enter into contracts and otherwise engage in professions which the minor could if they were eighteen years old. The court has broad discretion to set restrictions and qualifications in the decree. Tenn. Code Ann. § 29-31-105. Tennessee law does not set a minimum age for a person to seek removal of the disability of minority.

3

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

<b>Reproductive health</b>	<b>Any age:</b> <i>Contraception:</i> Contraceptive supplies and information may be furnished by physicians to any minor who is pregnant, a parent, married, or who requests and needs birth control procedures, supplies, or information. Tenn. Code Ann. § 68-34-107. <i>Sterilization:</i> A physician may perform a sterilization operation on a married person less than eighteen years or age if the married minor requests it in writing and the physician fully explains the meaning and consequence of the operation to the patient. Tenn. Code Ann. § 68-34-108. <i>Abortion:</i> Parental consent is generally required prior to performing an abortion on a minor, although exceptions are available in the case of incest. Tenn. Code Ann. § 37-10-303. <i>STDs:</i> Any physician or certain other providers may examine, diagnose, and treat minors infected with sexually transmitted diseases without the knowledge or consent of the parents of the minors. Tenn. Code Ann. § 68-10-104. <i>Prenatal:</i> A licensee may examine, diagnose, and treat a minor for the purpose of providing prenatal care without the knowledge or consent of the parents or guardian of the minor. Tenn. Code Ann. § 63-6-223.
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<b>Reproductive health, cont.</b>	<b>Note:</b> 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.
<b>General medical</b>	Although the general rule is that parental consent is required to treat minors, Tennessee has adopted the common law “mature minor” exception that permits certain minors to consent to medical treatment, depending on the facts of the case. This exception recognizes that minors achieve varying degrees of maturity and responsibility, and generally takes the following form: under the age of seven, no capacity; between seven and fourteen, a rebuttable presumption of no capacity; between fourteen and eighteen, a rebuttable presumption of capacity. <i>See Cardwell v. Bechtol</i> , 724 S.W.2d 739 (Tenn. 1987).
<b>Mental health and chemical dependency</b>	<b>Minors sixteen or older:</b> <i>Mental Health:</i> If a child with serious emotional disturbance or mental illness is sixteen years of age or older, the child has the same rights as an adult with respect to outpatient and inpatient mental health treatment, medication decisions, and confidential information. Tenn. Code Ann. § 33-8-202. Outpatient facilities or professionals may provide treatment rehabilitation without the consent of the child’s parent or legal guardian. <i>Drug Abuse:</i> Physicians may treat juvenile drug abusers without parental consent. Tenn. Code Ann. § 63-6-220.

## 4

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

## 5

### **What are the child abuse mandatory reporting obligations in Tennessee?**

**Who is a mandatory reporter of child abuse?** Tennessee requires that any person who knows of or is called upon to help any child who is suffering from or who has sustained any disability or physical or mental harm report such harm immediately if it appears to have been caused by abuse or neglect. Tenn. Code Ann. § 37-1-403.

Further, any person who knows or has reasonable cause to suspect that a child has been sexually abused must report that information regardless of whether the person knows or believes that the child has sustained any apparent injury as a result of the abuse. Tenn. Code Ann. § 37-1-403.

**How is “child” defined for purposes of Tennessee’s mandatory reporting law?** A child is a person who is under eighteen years of age or who is reasonably presumed to be under eighteen years of age. Tenn. Code Ann. § 37-1-401.

**How is “abuse” defined?** Abuse exists when a person under the age of eighteen is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury,

disability, or physical or mental condition caused by brutality, neglect, or other actions or inactions of a parent, relative, guardian, or caretaker. Tenn. Code Ann. § 37-1-102(b)(1).

**When must a mandatory reporter make a report?** Any person who comes into contact with a child's injury must make a report if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse, or neglect, or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse, or neglect. Tenn. Code Ann. § 37-1-403(a)(1).

**What must be reported if I am required to report child abuse?** To the extent known by the reporter, the report should include:

- Child's name, address, telephone number, and age
- Name, address, and telephone number of person responsible for care of child
- Facts prompting filing of report

See Tenn. Code Ann. § 37-1-403(a)(3)(b).

**To whom must I make a report when I'm required to do so?** A report may be made by telephone or otherwise to the:

- Judge having juvenile jurisdiction over the child
- Department of Children's Services
- Sheriff of county where the child resides
- Chief law enforcement official of municipality where child resides

See Tenn. Code Ann. § 37-1-403(a)(2).

## 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.

If a recipient of mental health/substance abuse services has communicated to a qualified mental health professional or behavior analyst an actual threat of bodily harm against a clearly identified victim; and the professional, using reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, has determined or reasonably should have determined that the service recipient has the apparent ability to commit such an act and is likely to carry out the threat unless prevented from doing so, then the professional should take reasonable care to predict, warn, or take precautions to protect the identified victim from the service recipient's violent behavior. Tenn. Code Ann. § 33-3-206.

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](mailto: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?** Tennessee only has a statutory victim-advocate privilege to the extent that the “records of domestic violence shelters, rape crisis centers, and human trafficking service providers shall be treated as confidential by the records custodian of such shelters, centers, or providers unless: (1) The individual to whom the records pertain authorizes their release; or (2) A court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.” Tenn. Code Ann. § 36-3-623(a).

**8**

**Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Tennessee?** The confidentiality of records statute does not indicate that a third party being present affects the records’ confidentiality.

**9**

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

**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).

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## Endnotes

- 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/](https://www.americanbar.org/groups/legal_services/flh-home/flh-hire-a-lawyer/). Or contact your jurisdiction’s coalition or bar association.