



Texas

Minors' Privacy Toolkit

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 Texas? Under Texas law, a "minor" or "child" means a person under eighteen years of age who has not been married or who has not had the disabilities of minority removed for general purposes. Tex. Fam. Code § 101.003; see also Tex. Civ. Prac. & Rem. Code § 129.001.

2

How does emancipation work in Texas? Under Texas law, emancipation is referred to as "removal of disabilities of minority." The minor (age sixteen or seventeen and living apart from their parents) may file suit for removal in the minor's own name (e.g., no 'next friend' must represent the minor.) The court may issue an order removing some or all of the disabilities of minority of the minor; the court's order will state the limited or general purposes for which disabilities are removed. If the court orders removal for general purposes, then except for specific constitutional and statutory age requirements, the minor has the capacity of an adult, including the capacity to contract. Unless otherwise provided by federal law, all educational rights accorded to the parent of a student will transfer to the minor whose disabilities are removed for general purposes. Tex. Fam. Code § 31.006. If the court orders removal for specific purposes, then the scope of the removal is defined by the court's order.

3

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

Reproductive health	<p>General: A child who is unmarried and pregnant may consent to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy. Tex. Fam. Code § 32.003.</p> <p>Abortion: A physician may not perform an abortion on a pregnant, unemancipated minor unless the physician gives at least forty-eight hours actual notice to the parent of the minor, conservator, or guardian, or the physician receives a court order authorizing the minor to consent to the abortion. An exception is when the performing physician concludes that a medical emergency exists.</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, cont.</p>	<p>The law details the requirements of notification, including how the physician may proceed if the party to be notified cannot be located and waiver options for the notice requirements. The law also sets forth a judicial approval process pursuant to which pregnant minors may file an application for a court order authorizing the minor to consent to the performance of an abortion without notification and consent of a parent, conservator, or guardian. Tex. Fam. Code § 33.003.</p> <p>Physicians are otherwise prohibited from performing abortions on unemancipated or unmarried minors. Tex. Occ. Code § 164.052(19).</p> <p>Note: All clinics or providers who participate in Title X grant programs are required to follow federal regulations regarding consent and confidentiality per 42 CFR § 59.11.</p>
<p>General medical</p>	<p>Texas generally affords the parents of a child the right to consent to the child’s medical and dental care, and psychiatric, psychological, and surgical treatment. Tex. Fam. Code § 151.001(a)(6). However, Texas law also sets out seven circumstances under which the child may consent to such treatment if the child:</p> <ol style="list-style-type: none"> (1) is on activity duty with U.S. armed services; (2) is sixteen years old or older and resides apart from their parents, managing conservator, or guardian, with or without consent of the parents, managing conservator, or guardian and manages their own financial affairs; (3) consents to the diagnosis and treatment of an infectious, contagious, or communicable disease that is required by law or a rule to be reported; (4) is unmarried and pregnant and consents to medical treatment, other than abortion, related to pregnancy; (5) consents to examination and treatment for drug or chemical addiction, dependency, or other condition directly related to drug or chemical use; (6) is unmarried, is the parent of a child, and has actual custody of their child and consents to medical, dental, psychological, or surgical treatment for the child; or (7) is confined in a Texas Department of Criminal Justice facility. Tex. Fam. Code § 32.003.
<p>Mental health and chemical dependency</p>	<p>A child may consent to counseling for suicide prevention; chemical addiction or dependency; or sexual, physical, or emotional abuse under certain circumstances. See Tex. Fam. Code § 32.004(a). Additionally, a licensed or certified physician, psychologist, counselor, or social worker “having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:</p> <ol style="list-style-type: none"> (1) counsel the child without the consent of the child’s parents or, if applicable, managing conservator or guardian; (2) with or without the consent of the child who is a client, advise the child’s parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the child; and (3) rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child’s own treatment.” Tex. Fam. Code § 32.004(b). <p>In all of the above cases, the counseling may only be provided if not otherwise limited by court order. Tex. Fam. Code § 32.004.</p>

Other	Examinations Without Consent of Abuse or Neglect of Child. “A physician, dentist, or psychologist having reasonable grounds to believe that a child’s physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child’s parents, or other person authorized to consent to treatment. Such an examination may include X-rays, blood tests, photographs, and penetration of tissue necessary to accomplish those tests. However, unless consent is obtained as otherwise allowed by law, the physician, dentist, or psychologist may not examine a child: (1) 16 years of age or older who refuses to consent; or (2) for whom consent is prohibited by a court order.” Tex. Fam. Code § 32.005.
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As an OVW-funded victim service provider, why do I need to know the child abuse mandatory reporting obligations in Texas?

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 Texas.

5

What are the child abuse mandatory reporting obligations in Texas?

Who is a mandatory reporter of child abuse? Any person having cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report of this belief. Tex. Fam. Code § 261.101(a). However, professionals (defined in Tex. Fam. Code § 261.101(b)), physicians, and Judges/Justices have special rules about to whom they must report and when. See Tex. Fam. Code § 33.008(a) for physicians and Tex. Fam. Code § 33.0085 for Judges/Justices. Guardians Ad Litem also have their own reporting statute, found at Tex. Fam. Code § 33.009.

How is “child” defined for purposes of Texas’ mandatory reporting law? A “minor” or “child” means a person under eighteen years of age who has not been married or who has not had the disabilities of minority removed for general purposes. Tex. Fam. Code § 101.003.

How is “abuse” defined? Abuse is defined at Tex. Fam. Code § 261.001, and includes physical, mental, and emotional injuries, sexual conduct, forced child marriage, and use of controlled substances, among other acts.

When must a mandatory reporter make a report? A mandatory reporter is required to report whenever they have “cause to believe” that the child has been abused or neglected. Tex. Fam. Code § 261.001. For “professionals” who must report, the report must be made by the 48th hour after learning of the abuse; for judges and physicians, the report must be made immediately.

What must be reported if I am required to report child abuse? “The report should reflect the reporter’s belief that a child has been or may be abused or neglected or has died of abuse or neglect.” Tex. Fam. Code § 261.102. “If known, the person making the report should also identify the name and address of the child; the name and address of the person responsible for the care, custody, or

welfare of the child; and any other pertinent information concerning the alleged or suspected abuse or neglect.” Tex. Fam. Code § 261.104.

To whom must I make a report when I’m required to do so? Reports shall be made to:

- Any local or state law enforcement agency
- The Department of Family and Protective Services
- The state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred

Reports may be made to the Texas Juvenile Justice Department instead of the entities listed above if the reports are based on information provided by a child while under the supervision of the Texas Juvenile Justice Department concerning the child’s alleged abuse of another child.

In all cases, reports must be made to the Department of Family and Protective Services if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child. Tex. Fam. Code § 261.103.

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.

Mental health professionals have permissive, but not mandatory, authority to make such reports pursuant to Tex. Health & Safety Code Ann. § 611.004. *See also Thapar v. Zezulka*, 994 S.W.2d 635 (Tex. 1999) (Texas Supreme Court declining to impose on mental health professionals a duty to warn third parties of patient’s threats).

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? Texas law establishes that “written or oral communication between an advocate and a victim made in the course of advising, advocating for, counseling, or assisting the victim is confidential.” Tex. Fam. Code § 93.002. However, there is an exception to this privilege for mandatory reporting of child abuse. Tex. Fam. Code § 93.004.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Texas? The advocate privilege statute confers the ability to claim the privilege on “a parent, guardian, or conservator of a victim under eighteen years of age” and so it appears that their presence would not waive this privilege. Tex. Fam. Code § 93.003.

9

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

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).