



Utah

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 Utah? "Minor" means: (a) a child; or (b) an individual who is: (i) at least eighteen years of age and younger than 21 years of age; and (ii) under the jurisdiction of the juvenile court." Utah Code Ann. § 78A-6-105(32).

"Child" means an individual under 18 years of age." Utah Code Ann. 1953 § 78A-6-105(6). But with respect to the provisions on emancipation, "[m]inor" means a person 16 years of age or older." Utah Code Ann. § 78A-6-802(2).

2

How does emancipation work in Utah? A minor may petition the juvenile court for a declaration of emancipation. The minor must be: sixteen years of age or older; capable of living independently of their parents or guardian; and capable of managing their own financial affairs. See Utah Code Ann. § 78A-6-803.

3

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

Consent to treatment of STD	Minors may consent to medical care or services by hospital or public clinic in the case of affliction with a sexually transmitted disease. Utah Code Ann. § 26-6-18.
Abortion consent	Minors can seek a court order to be able to consent to an abortion without their parents' consent. Utah Code Ann. § 76-6-304.5(1)(b). Court must find that minor gave consent to the abortion, is mature and capable of giving informed consent to the abortion, and the abortion is in the minor's best interest. Utah Code Ann. § 76-6-304.5 (4)(b)(i)-(ii). The process for this consent is outlined in Utah R. Juv. P. Rule 60. 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.

Consent to vaccination	A minor may consent to vaccinations against epidemic infections and communicable diseases as well as examinations and vaccinations required to attend school if the minor is emancipated, a parent with custody of a minor child, pregnant, married, or previously married. Utah Code Ann. § 26-10-9.
Consent to adoption of child	A minor parent has the power to consent to the adoption of the minor's own child and relinquish the minor's control or custody of the child for adoption. Utah Code Ann. § 78B-6-123. Minors cannot consent to sexual exploitation. Utah Code Ann. § 76-5b-102.

4

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

5

What are the child abuse mandatory reporting obligations in Utah?

Who is a mandatory reporter of child abuse? Utah's statute says that "when an individual ... has reason to believe that a child has been subjected to abuse or neglect, or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, that individual shall immediately report the alleged abuse or neglect to the nearest peace officer, law enforcement agency, or office of the division." Utah Code Ann. § 62A-4a-403(1)(a). An exception exists for a member of the clergy who learned the information through a confession made to them while they are functioning in their ministerial capacity and do not have the consent of the person making the confession to share it. Utah Code Ann. § 62A-4a-403(2).

How is "child" defined for purposes of Utah's mandatory reporting law? "Child" is an individual under eighteen years of age. Utah Code Ann. § 78A-6-105(6).

How is "abuse" defined? According to Utah Code Ann. § 62A-4a-101, "abuse" "means the same as that term is defined in Section 78A-6-105," i.e., as a nonaccidental harm, threatened harm, sexual exploitation, sexual abuse, or human trafficking of a child. Utah Code Ann. § 78A-6-105(1)(a)(i)(A)-I. Abuse also occurs when a child's natural parent intentionally, knowingly, or recklessly causes the death of another parent of the child; is the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child. Utah Code Ann. § 78A-6-105(1)(a)(ii)(A)-(C). "Abuse" does not include reasonable discipline or management of a child, including withholding privileges; conduct described in section 76-2-401 (conduct was justified); or the use of reasonable and necessary physical restraint or force on a child in self-defense, defense of others, to protect the child, or to

remove a weapon in possession of a child for any reasons described in Subsections (1)(b)(iii)(A)-(C). Utah Code Ann. §§ 78A-6-105(1)(a)(i)(A)-I, 78A-6-105(1)(b)(i)-(iii).

When must a mandatory reporter make a report? A report must be made immediately. Utah Code Ann. § 62A-4a-403(1)(a). Further, reports “shall be followed by a written report within 48 hours, if requested by the division.” Utah Code Ann. § 62A-4a-408(1).

What must be reported if I am required to report child abuse? There is no required list of information that must be reported except that Utah Code Ann. § 62A-4a-408(2) says that where a physician is required to report incest or abuse of a minor, the report “may not include information that would in any way disclose that the report was made in connection with: (a) an abortion; or (b) a consultation regarding an abortion.”

To whom must I make a report when I’m required to do so? Individuals shall report the alleged abuse or neglect to the nearest peace officer, law enforcement agency, or office of the division. Utah Code Ann. § 62A-4a-403(1)(a). The “division” seems to be the Division of Child and Family Services within the Utah Department of Human Services. *See Devlin v. Smalley*, 4 F. Supp. 2d 1315, 1318-19 (D. Utah 1998).

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.

Utah imposes statutory duties to warn on mental health professionals (such as psychiatrists, psychologists, and social workers) when a patient makes an actual threat of physical violence against a clearly identified or reasonably identifiable victim. *See* Utah Code Ann. § 78B-3-502(1); Utah Code Ann. § 78B-3-501.

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. “A victim communicating with a victim advocate has a privilege during the victim’s life to refuse to disclose and to prevent any other person from disclosing a confidential communication.” Utah Rules of Evidence, Rule 512.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Utah? The Utah Supreme Court established that generally where the presence of a third person is reasonably necessary under the circumstances, privileged communications are not waived because of that person’s presence. *Hofmann v. Conder*, 712 P.2d 216, 216-17 (1985).

Rule of Evidence 506(b) states that the physician- or mental health therapist-patient privilege “extends to communications between a health care provider and a parent or guardian ‘who [is]

present to further the interest of the patient because [such parent or guardian is] reasonably necessary for the transmission of the communications, or participating in the diagnosis and treatment under the direction of the physician or mental health therapist.’” *State v. Worthen*, 177 P. 3d 664, 674 fn. 6 (Utah Ct. App. 2008), aff’d 222 P. 3d 1144 (Utah 2009) (citing Utah R. Evid. 506(b)).

9

Does Utah 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).

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/. Or contact your jurisdiction’s coalition or bar association.