



# Virginia

## 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.<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).

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**Who is a “minor” in Virginia?** A minor is an individual under the age of eighteen. Va. Code Ann. § 1-204.

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**How does emancipation work in Virginia?** Any minor who has reached their sixteenth birthday, or any parent or guardian of such minor, may petition the juvenile and domestic relations district court for a determination that the minor named in the petition be emancipated. Va. Code Ann. § 16.1-331.

The court may enter an order declaring the minor emancipated if the minor is married or desires to be married, on active duty with the armed forces, or willingly lives separate from their parents or guardian, with the consent or acquiescence of the parents or guardian, and is capable of supporting themselves and competently managing their own financial affairs. Va. Code Ann. § 16.1-333.

Emancipation statute	Minor as adult for these purposes
Va. Code Ann. § 16.1-334.	Medical, dental, psychiatric care; contracts, executing wills; to sue and be sued in their own name; entitled to their earnings and free of control by parents or guardian; establish their own residence; buy and sell real property; enroll in any school or institution of higher education;  secure a driver's license; no parental liability for their acts; may not have a guardian ad litem appointed solely because they are under age eighteen; marriage.

<sup>1</sup> 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.

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

<p><b>General medical, mental health</b></p>	<p>A minor shall be deemed an adult for the purpose of consenting to:</p> <ul style="list-style-type: none"> <li>• Medical or health services needed, and access and disclosure of related records: <ul style="list-style-type: none"> <li>◦ to diagnose or to treat sexually transmitted infections, or any infectious or contagious disease that the State Board of Health requires to be reported</li> <li>◦ related to birth control, pregnancy, or family planning except for sterilization</li> <li>◦ needed for outpatient care, treatment, or rehabilitation for substance abuse, or for mental illness or emotional disturbance</li> </ul> </li> <li>• Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment</li> <li>• A pregnant minor shall be deemed an adult for the sole purpose of giving consent for surgical and medical treatment relating to the delivery of their child, and surgical and medical treatment for their child.</li> <li>• Any minor sixteen years of age or older may, with the consent of a parent or legal guardian, donate blood for compensation. Parental consent to donate blood by any minor seventeen or older shall not be required if the minor receives no consideration for the donation and the procurer of the blood is a nonprofit, voluntary organization</li> </ul> <p><i>See Va. Code Ann. § 54.1-2969(E)-(H), (J).</i></p>
<p><b>Sexual and reproductive health</b></p>	<p>In addition to being able to consent to birth control, family planning, and medical treatment related to childbirth, minors may consent to an abortion if they comply with Va. Code Ann. § 16.1-241, which provides that a minor seeking an abortion without parental consent must file a petition with the local juvenile court for an order authorizing a doctor to perform the procedure.</p> <p>A licensed physician, physician assistant, nurse practitioner, or registered nurse may perform a physical evidence recovery kit examination for a person who is believed to be the victim of a sexual assault. If a parent or guardian of a minor refuses to consent to a physical evidence recovery kit examination of the minor, the minor may consent. Va. Code Ann. § 54.1-2970.1(A); (A1).</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 C.F.R. § 59.11.</p>

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

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

**Who is a mandatory reporter of child abuse/neglect?** Va. Code Ann. § 63.2-1509(A) contains a long list of mandatory reporters who must report their suspicions of child abuse or neglect when they came to be as part of their “professional or official capacity.” The professionals include, in relevant part:

- Any person licensed to practice medicine or any of the healing arts
- Any person employed as a social worker or family-services specialist
- Any teacher or other person employed in a public or private school, kindergarten, or nursery school, or providing childcare for pay on a regular basis
- Any mental health professional
- Any person eighteen years of age or older who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect
- Any person, other than an attorney, who is employed by a public or private institution of higher education
- Any “regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church” who receives “information that would be subject to the priest/penitent privilege exception if offered as evidence in court” is not required to report. See Va. Code Ann. § 8.01-400, or Va. Code Ann. § 19.2-271.3.

**How is “child” defined for purposes of Virginia’s mandatory reporting law?** A child is any individual under the age of eighteen years old. Va. Code Ann. § 63.2-100.

**How is “abuse” defined?** An abused or neglected child is one whose parents or other caretakers (such as foster parent, child care provider, or institutional worker responsible for the welfare of the child) causes or threatens to cause a non-accidental physical or mental injury; has a child present during manufacture or attempted manufacture of controlled substances; neglects or refuses to provide adequate food, clothing, shelter, emotional nurturing, health care or supervision; abandons the child; knowingly leaves a child alone with a person convicted as a violent sex offender; or commits or allows to be committed illegal sexual act upon the child. Child victims of sex trafficking are also included in the definition of abuse. See Va. Code Ann. § 37.2-100.

**When must a mandatory reporter make a report?** A mandatory reporter must make a report within 72 hours of first suspicion. Va. Code. Ann. § 63.2-1509.

**What must be reported if I am required to report child abuse?** A reporter must disclose all information that is the basis for their suspicion of abuse or neglect of and, upon request, , any information, records, or reports that document the basis for the report. Va. Code Ann. § 63.2-1509(A).

**To whom must I make a report when I'm required to do so?** Reports are to be made to the local department of social services in the county or city where the child resides or where the abuse or neglect is believed to have occurred or to the Department of Social Service's toll-free child abuse and neglect hotline. Va. Code Ann. § 63.2-1509.

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**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.

Virginia "mental health service providers" have a duty to warn / protect statute (Va. Code Ann. § 54.1-2400.1), which applies whenever a client orally, in writing or via sign language, communicates a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider believes, or should believe, according to the standards of their profession, that the client has the intent and ability to carry out that threat immediately or imminently. Must make reasonable efforts to notify law enforcement in relevant jurisdiction; take reasonable steps to prevent; provide therapy / counseling; make reasonable attempts to warn potential victim.

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.

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**May domestic violence and sexual assault advocates have privileged communications with a minor survivor?** Virginia does not have a statutory victim-advocate privilege.<sup>2</sup> The Virginia victim-advocate *confidentiality* provision requires programs and individuals providing services to victims of sexual assault or domestic violence to protect the confidentiality and privacy of such victims and to not: (1) Disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through sexual or domestic violence programs; or (2) Reveal individual client information without the informed, written, reasonably time-limited consent of the person (in the case of an unemancipated minor, the minor and the parent or guardian), except that consent for release may not be given by the abuser or alleged abuser of the minor or the abuser or alleged abuser of the other parent of the minor. Va. Code Ann. §63.2-104.1.

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**Does a parent or guardian's presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Virginia?** Virginia law does not indicate whether privilege is waived when a third party is present during a privileged conversation.

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**Does Virginia have a privilege that protects the privacy of communication between a parent and a child?** No.

<sup>2</sup> *Doe v. Old Dominion Univ.*, 289 F.Supp.3d 744 (E.D. Va. 2018) established a qualified victim-advocate privilege in federal court.

**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).