



Minors' Privacy Toolkit

Washington

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 Washington? Under Washington law, a minor is an unmarried person under the age of eighteen years. Wash. Rev. Code § 26.28.010 (“Except as otherwise specifically provided by law, all persons shall be deemed and taken to be of full age for all purposes at the age of eighteen years.”); Wash. Rev. Code § 26.28.20 (“All minor persons married to a person of full age shall be deemed and taken to be of full age.”)

2

How does emancipation work in Washington? Under Washington law, any minor who is sixteen years of age or older and who is a resident of Washington may petition in the superior court for a declaration of emancipation. Wash. Rev. Code § 13.64.010.

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect	Relevant case law
Wash. Rev. Code §§ 13.64.010; 13.64.060	Termination of parental obligations; to sue or be sued; to retain own earnings; to establish a separate residence; to enter into nonvoidable contract; to act autonomously, and with the power and capacity of an adult, in all business relationships, including property transactions; to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority; and to give informed consent for receiving health care services	Adult criminal laws (exceptions apply; voting; use of alcoholic beverages; possession of firearms; and other health and safety regulations relevant to the minor because of the minor's age	<i>Tunstall v. Bergeson</i> , 141 Wash.2d 201, 219 (2000) “Finally ... individuals over age 18 are generally emancipated and are able to marry without parental consent, to execute a will, to vote, to enter into a legally binding contract, to make medical decisions about their own care and those of their issue, and to sue and be sued.” See Wash. Rev. Code § 26.28.010, .015(1)-(6) (under “Age of Majority” chapter, “all persons shall be deemed and taken to be full age for all purposes at the age of eighteen years[,]” unless otherwise provided).

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

Emergency medical services	<p>If a parent's consent is not available, the consent requirement is satisfied and the minor can receive medical services. Wash. Rev. Code § 7.70.050(4).</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>
Non-emergency medical services	<p>A mature minor can consent to non-emergency medical services based on an assessment of the minor's maturity. <i>Smith v. Seibly</i>, 72 Wash.2d 16, 21 (1967). In determining whether the patient is a mature minor, providers will evaluate the minor's age, intelligence, maturity, training, experience, economic circumstances, general conduct as an adult, and freedom from the control of parents.</p>
STI testing/treatment (including HIV)	<p>Minors may consent to tests and/or treatment for sexually transmitted diseases if they are fourteen years of age or older. Wash. Rev. Code § 70.24.110.</p>
Birth control services	<p>Minors may consent to or refuse birth control services. Wash. Rev. Code § 9.02.100(1).</p>
Prenatal care and abortion services	<p>Minors may consent to receive prenatal care, an abortion, and abortion related services at any age. Wash. Rev. Code § 9.02.100(2); <i>State v. Koome</i>, 84 Wn.2d 901 (1975).</p>
Outpatient mental health treatment	<p>Minors may consent to outpatient mental health treatment if they are thirteen years of age or older. Wash. Rev. Code § 71.34.530. The parents will not be notified without minor consent.</p>
Inpatient mental health treatment	<p>Minors thirteen years of age or older may consent to inpatient mental health treatment. The parents must be notified. Wash. Rev. Code § 71.34.500.</p>
Outpatient substance abuse treatment	<p>Minors thirteen years of age or older may consent to outpatient substance abuse treatment. Wash. Rev. Code § 70.96A.095.</p> <p>The provider "will inform the parents that the minor is receiving outpatient treatment within seven business days if the minor gives written consent or if the provider determines that the minor is not capable of making a rational choice to receive the treatment." Wash. Rev. Code § 70.96A.235.</p>
Inpatient substance abuse treatment	<p>Minors thirteen years of age or older may consent to inpatient substance abuse treatment if the Department of Social and Health Services determines they are a "child in need of services." Wash. Rev. Code 70.96A.235.</p> <p>School district personnel who contact a chemical dependency inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. Wash. Rev. Code 70.96A.096. Parental notification is required if parental consent is required.</p>

4

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

5

What are the child abuse mandatory reporting obligations in Washington?

Who is a mandatory reporter of child abuse? In Washington, there is a long list of mandatory reporters. (See Wash. Rev. Code § 26.44.030 for a full list.) These reporters include:

- Medical practitioners
- Social service counselors/therapists
- Psychologists
- School personnel
- Childcare providers
- Adults residing with child suspected to have been severely abused

How is “child” defined for purposes of Washington’s mandatory reporting law? Wash. Rev. Code § 26.44.020(2) defines a “child” as any person under the age of eighteen years of age.

How is “abuse” defined? Wash. Rev. Code § 26-44-020 defines abuse or neglect as “sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child’s health, welfare, or safety, excluding conduct permitted under Rev. Code § 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child.”

When must a mandatory reporter make a report? The report must be made at the first opportunity, but no later than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. Wash. Rev. Code § 26.44.030(1)(g). “Reasonable cause” means a person witnesses or receives a credible report alleging abuse, including sexual contact, or neglect of a child. Wash. Rev. Code § 26.44.030(1)(b)(iii).

What must be reported if I am required to report child abuse? Reports must contain the following information, if known:

- Name, address, and age of child
- Name and address of child’s parents, stepparents, guardians, or other persons having custody of child
- Nature and extent of the alleged injury or injuries, alleged neglect, or alleged sexual abuse
- Any evidence of previous injuries, including their nature and extent
- Any other information that may be helpful in establishing cause of child’s death, injury, or injuries and identity of alleged perpetrator(s)

See Wash. Rev. Code 26.44.040.

The report must also include the identity of the accused, if known. Wash. Rev. Code § 26.44.030(1)(g).

To whom must I make a report when I'm required to do so? The report must be made by telephone or otherwise to the proper law enforcement agency or to the department of social and health services as provided in Wash. Rev. Code §§ 26.44.040; 26.44.030(1)(a)).

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.

Various health professionals and agencies have a duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim(s). The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel. Wash. Rev. Code § 71.05.120

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 domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate." Wash. Rev. Code § 5.60.060(8). This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under Wash. Rev. Code § 26.44.030(1) or to disclose relevant records relating to a child as required by Wash. Rev. Code § 26.44.030(14).

"A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate." Wash. Rev. Code § 5.60.060(7).

8

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

9

Does Washington 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).

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.