



Minors' Privacy Toolkit

West Virginia

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 West Virginia? In West Virginia, a “minor” is a person under the age of eighteen years. W. Va. Code § 2-2-10(aa).

2

How does emancipation work in West Virginia? Under West Virginia, a child over the age of sixteen may petition a court to be declared emancipated. W. Va. Code § 49-4-115(a). If the child shows they can provide for their physical and financial well-being and have the ability to make decisions for themselves, the court may “for good cause shown” declare the child emancipated. The child then has full capacity to contract in their own right and the parents or custodians have no right to their custody and control or duty to provide them with care and financial support. *Id.* at (b).

A child over the age of sixteen years who marries is emancipated by operation of law. *Id.* at (c).

In West Virginia, an emancipated child has all of the privileges, rights, and duties of an adult, including the right of contract, except that the child remains a child for the purposes of juvenile offender rehabilitation and juvenile proceedings. W. Va. Code § 49-4-115.

3

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

Emergency medical services

If a minor is the only “person reasonably available” legally authorized to consent or refuse care, minor alone may consent. W. Va. Code § 16-4C-17.

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.

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>Non-emergency medical services</p>	<p>“Except in very extreme cases, a physician has no legal right to perform a procedure upon, or administer or withhold treatment from a patient without the patient’s consent, nor upon a child without the consent of the child’s parents or guardian, unless the child is a mature minor, in which case the child’s consent would be required. Whether a child is a mature minor is a question of fact. Whether the child has the capacity to consent depends upon the age, ability, experience, education, training, and degree of maturity or judgment obtained by the child, as well as upon the conduct and demeanor of the child at the time of the procedure or treatment. The factual determination would also involve whether the minor has the capacity to appreciate the nature, risks, and consequences of the medical procedure to be performed, or the treatment to be administered or withheld. Where there is a conflict between the intentions of one or both parents and the minor, the physician’s good faith assessment of the minor’s maturity level would immunize them from liability for the failure to obtain parental consent.” <i>Belcher v. Charleston Area Medical Center</i>, 188 W. Va. 105, 116 (1992).</p>
<p>STI treatment</p>	<p>W. Va. Code § 16-4-10: Minors may consent to examination, diagnosis, and treatment for any venereal disease without the knowledge or consent of the minor’s parent or guardian.</p>
<p>Family planning and prenatal services</p>	<p>Minors can give consent for birth control services. <i>Doe v. Pickett</i>, 480 F.Supp. 1218 (S.D.W.V. 1979) (policy of denying birth control and family planning services to persons under the age of 18 who do not have their parental consent violates Title X of the Public Health Service Act and Titles IV, XIX and XX of the Social Security Act).</p> <p>Health care providers are not required to release any information to a parent without the written consent of the minor for the following services: birth control, prenatal care, drug treatment or related services, and sexually transmitted diseases. W. Va. Code § 16-29-1.</p>
<p>Abortion services</p>	<p>An unemancipated minor cannot consent to an abortion until notice of the pending abortion is given by the physician to the minor’s parent, guardian, or conservator and 48 hours have passed. There is a judicial bypass procedure for the notice and an exception for emergencies. <i>See</i> W. Va. Code § 16-2F-3.</p>
<p>Mental health treatment (inpatient and outpatient)</p>	<p>Unemancipated minors who are mentally ill or have manifested symptoms of mental illness can be admitted for diagnosis, care, and treatment only if there is an application for hospitalization on their behalf by the parents or other person with legal custody. <i>See</i> W. Va. Code § 27-4-1.</p>
<p>Substance abuse treatment (outpatient and inpatient)</p>	<p>Any licensed physician may examine, counsel, diagnose and treat any minor at their request for alcohol abuse or dependency. <i>See</i> W. Va. Code § 60-6-23.</p> <p>A licensed physician or “competent medically trained person under their direction” can treat any minor for addiction or chemical dependency without informing their parents or guardians. W. Va. Code § 60A-5-504(e).</p> <p>Health care providers are not required to release any information to a parent without the written consent of the minor for the following services: birth control, prenatal care, drug treatment or related services, and sexually transmitted diseases. <i>See</i> W. Va. Code § 16-29-1.</p>

4

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

5

What are the child abuse mandatory reporting obligations in West Virginia?

Who is a mandatory reporter of child abuse? W. Va. Code § 49-2-803 lists many professionals, including in relevant part: Any medical, dental, or mental health professional, schoolteacher, or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, or member of the clergy. West Virginia specifically exempts people under eighteen from their mandated reporting duty.

How is “child” defined for purposes of West Virginia’s mandatory reporting law? “Child” is defined as a person under eighteen years of age. W. Va. Code § 49-2-803(d).

How is “abuse” defined? W. Va. Code § 49-1-201 provides the definition for “abused child.” It includes children whose health or welfare are being harmed (physically, emotionally, or otherwise) by parents, guardians, or other custodians. The definition also includes children who are subjected to sexual abuse and exploitation, human trafficking, or domestic violence. There is also a definition of a neglected child under (2)(A) of W. Va. Code § 49-1-201.

When must a mandatory reporter make a report? Reports must be made immediately and not more than 24 hours after suspecting abuse or neglect. *See* W. Va. Code § 49-2-803(a). Reports shall be made immediately by telephone to the local department child protective service agency and shall be followed by a written report within forty-eight hours if requested by the receiving agency. *See* W. Va. Code § 49-2-809.

What must be reported if I am required to report child abuse? West Virginia does not have a statutory list of required information for a report.

To whom must I make a report when I’m required to do so? The report must be made to the Department of Health and Human Services.

“If the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint.

If the reporter is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made. Notifying a person in charge does not exempt a person from their mandate to report suspected abuse or neglect.” W. Va. Code § 49-2-803(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.

In West Virginia, confidential information *may* be disclosed by a psychologist or psychiatrist in order to protect against a clear and substantial danger of imminent injury by a patient to themselves or another. However, the statute does not specify the party to which such confidential information may be disclosed, nor does it provide an affirmative duty for such psychologist or psychiatrist to warn. W. Va. Code § 27-3-1(b)(5).

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? West Virginia’s domestic relations code provides that a “program licensed pursuant to this article may not disclose, reveal, or release or be compelled to disclose, reveal, or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services.” There are some exceptions to this privilege for court orders, emergencies, and other situations listed in the statute. W. Va. Code § 48-26-701.

8

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

9

Does West Virginia 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).