



Wisconsin

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 Wisconsin? In Wisconsin, a “minor” is a person under eighteen years of age. Wis. Stat. §§ 48.02(1d)(2), 990.01(3).

2

How does emancipation work in Wisconsin? Wisconsin courts grant emancipation requests on a case-by-case basis. For example, *Niesen*: “Marriage and entering into military service have been held to be acts of self-emancipation. *Niesen v. Niesen*, 38 Wis.2d 599 (1968). And the court also opined that there is “no hard-and-fast rule to determine emancipation—much depends upon the circumstances and the intent of him who has the power to effect an emancipation.” *Id.* at 603.

There is no emancipation statute in Wisconsin, though emancipation is referenced in Wisconsin statutes. For example, a Wisconsin statute that addresses the “parental consent required prior to abortion” defines “emancipated minor” as “a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to reaching the age of majority.” Wis. Stat. § 48.375(2)(e). “Emancipated minor” is not used elsewhere in Wisconsin statutes. Another statute, pertaining to guardianships and conservatorships, further addresses the “emancipation of married minors.” In relevant part, it states that “[e]xcept for a minor found to be incompetent, upon marriage, a minor is no longer a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward.” Wis. Stat. § 54.46(6). Thus, upon marriage, a minor is no longer subject guardianship.

3

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

General medical	Informed consent of one parent or guardian is required Wis. Admin. Code DHS § 94.02(22).
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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</p>	<p>Abortion for a non-emancipated minor: Both minor and parental consent required except in specific circumstances. Wis. Stat. § 48.375. (No parental consent required with abortion for emancipated minor per Wis. Stat. § 48.375(2)(e) (one who is married, previously given birth, otherwise freed).)</p> <p>HIV Testing: Age fourteen and older, no parental consent necessary Wis. Stat. § 252.15(3m)(c).</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>
<p>Mental health and chemical dependency</p>	<p>Minors fourteen or older: Informed consent of both the minor and parent or guardian is required for mental health treatment in treatment facility (except in cases where judicial order states otherwise). Wis. Stat. § 51.13(b).</p> <p>All minors: Alcohol or drug abuse treatment at inpatient facility over 72 hours requires parental consent. Wis. Stat. § 51.47(2).</p> <p>Minors twelve and older: Consent not required for outpatient alcohol or drug abuse evaluation or treatment; consent required prior to inpatient treatment and administration of controlled substances (except to detoxify under 72 hours). Wis. Stat. § 51.47(1).</p> <p>Minors under twelve: Alcohol or drug abuse evaluation or treatment may be rendered only if parent or guardian cannot be found.</p> <p>Note: Physicians and licensed facilities must receive parental consent to treat minors prior to surgery, administration of controlled substance, or admission for inpatient treatment (except to detoxify under 72 hours). Wis. Stat. § 51.47(1).</p>

4

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

5

What are the child abuse mandatory reporting obligations in Wisconsin?

Who is a mandatory reporter of child abuse/neglect? In Wisconsin, there is a long list of professionals who are classified as mandatory reporters. (See Wis. Stat. § 48.981(2)(a) for complete list.) These mandatory reporters include:

- Health care providers (physicians, nurses, dentists, optometrists, marriage and family therapists, etc.)
- Social workers

- School employees (teachers, administrators, counselors, etc.)
- Alcohol or other drug abuse counselors
- Child care providers
- Police or law enforcement officers

How is “child” defined for purposes of Wisconsin’s mandatory reporting law? “‘Child,’ when used without further qualification, means a person who is less than eighteen years of age....” Wis. Stat. § 48.02(2).

How is “abuse” defined? “Abuse,” other than when used in referring to abuse of alcohol beverages or other drugs, means any physical injury inflicted non-accidentally; sexual intercourse, assault, trafficking, or exploitation; emotional damage in some cases; methamphetamine manufacture in the child’s home or presence. For complete details, see Wis. Stat. § 48.02(1).

“Neglect means failure, refusal or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.” Wis. Stat. § 48.02(12g).

When must a mandatory reporter make a report? A report shall be made immediately. Wis. Stat. § 48.981(3)(a)(1).

What must be reported if I am required to report child abuse? The report must include the “facts and circumstances contributing to a suspicion of child abuse or neglect of unborn child abuse or to a belief that abuse or neglect will occur.” Wis. Stat. § 48.981(3)(a)(1).

To whom must I make a report when I’m required to do so? Reports may be made, by telephone or personally, to the county department (or agency contracted by the county) where the potential abuse may be occurring. Wis. Stat. § 48.981(3)(a)(1).

6

Must I notify someone if a minor is suicidal or a danger to others? Without a VAWA-compliant release of information, Office on Violence Against Women (OVW)-funded grantees and subgrantees can 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 a client 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.

Wisconsin’s school violence statute requires mandatory reporters listed in Wis. Stat. § 48.981(2)(a) to immediately inform law enforcement if the person believes in good faith, based on a threat made by an individual seen in the course of professional duties regarding violence in or targeted at a school, that there is a serious and imminent threat to the health or safety of a student or school employee or the public. Wis. Stat. § 175.32(2)(a). The mandatory reporter shall immediately inform, by telephone or personally, a law enforcement agency of the facts and circumstances contributing to the belief that there is a serious and imminent threat to the health or safety of a student or school employee or the public. Wis. Stat. § 175.32(3).

In *Schuster v. Altenberg*, 144 Wis. 2d 223 (1988), the Wisconsin Supreme Court held that mental health professionals have a duty to exercise reasonable care in the treatment of their patients by

warning others of danger or threats of harm. This includes the duty to warn and to take whatever other steps are reasonably necessary under the circumstances.

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, pursuant to Wisconsin’s sexual assault advocate-victim privilege: “A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, a victim advocate who is acting in the scope of his or her duties as a victim advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of a victim advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.” Wis. Stat. § 905.045(2).

“Victim” means an individual who has been the subject of abusive conduct or who alleges that they have been the subject of abusive conduct. Wis. Stat. § 905.045(4).

The privilege does not apply to reports concerning child abuse that a victim advocate is required to make under Wis. Stat. § 48.981 or concerning a threat of violence targeted at a school that a victim advocate is required to make under Wis. Stat. § 175.32. Wis. Stat. § 905.045(4).

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Wisconsin?

Probably not. A communication or information is “confidential” if not intended to be disclosed to third persons other than persons present to further the interest of the person receiving counseling, assistance, or support services, persons reasonably necessary for the transmission of the communication or information, and persons who are participating in providing counseling, assistance, or support services under the direction of a victim advocate, including family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services. Wis. Stat. § 905.045(1)(c).

9

Does Wisconsin 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).