



What to Know About Protecting Minors' Privacy Rights

Protecting the privacy of child and teen survivors of sexual assault, dating and domestic violence, and stalking (called “minors” in this document¹) can be challenging for victim services providers. For many minors, privacy is their priority. Fear that information about the survivor, or the abuse itself, may be disclosed to anyone outside your agency can cause a survivor to refuse to speak with you or to not seek services in the first place. While minors do not enjoy the exact same privacy rights as adults, they do still have rights.

This assessment tool discusses challenges minor survivors face with privacy, and how advocates can address these issues honestly, while still promoting survivor agency and ensuring informed consent. It is meant to help you and your victim services organization² determine your readiness to provide confidential services for survivors who are minors and it is designed as a companion tool to “Working with Minors: A Privacy and Confidentiality Worksheet.” The answers to the “Implementation Questions” asked throughout this assessment may be recorded on the Worksheet.

Who Has Legal Authority to Make Decisions?

Figuring out who is legally in control of the decision-making can take some effort, but it is important. When you are serving minors, you need to know how parents' and guardians' legal authority to make certain decisions will affect decisions such as who can agree to receive (or refuse to receive) services, who can sign away rights and who can affirmatively assert them, who controls the flow of information, and much more.

To determine whether a minor can legally consent to services, and what a guardian or parent's role may be with respect to those services, start here.

- **What does the law say?** Does your jurisdiction have a statute, regulation, or case law that addresses the age a minor can legally consent to your specific services or has legal capacity generally? If not, do other statutes or legal guidance support a minor's right to access comparable services that could be interpreted to apply to the services you provide?
- **Is the minor emancipated?** Some jurisdictions allow a minor to legally separate from their parent or guardian, and to be treated as an adult under the law for many purposes. In some states, specific statutes set out the emancipation process. In others, emancipation is determined by the courts on a case-by-case basis, weighing several factors—for instance, whether the minor is living on their own or is financially self-sufficient. For most purposes an emancipated minor will be treated as an adult under the law and can enter into binding contracts and make binding decisions about their health, education, and welfare—including for advocacy and legal services. It's not always clear, though, if emancipation removes a minor from being a “child” under child abuse reporting law.

¹ The use of the term “minor” is being used for the specific legal meaning of survivors under the age of 18. When working with and serving minors yourself, it is generally preferable to use a less clinical or distancing term.

² For purposes of this toolkit, we assume that your organization receives federal, state, territorial, or tribal funding that triggers the privacy obligations set forth in the Violence Against Women Act (VAWA) and/or the Victims of Crime Act (VOCA). Most of the obligations discussed in this document apply to organizations funded by the Family Violence Prevention and Services Act (FVPSA), too.

- **Implementation Questions:** Does your organization ask minors about emancipation? Are staff informed about how serving an emancipated minor impacts consent, and confidentiality rights, including mandatory reporting? Are there any differences in your jurisdiction between providing services to an emancipated minor and an adult?
- **Are there other legal frameworks that would allow you to provide services directly to a minor without parent/guardian involvement?** In some jurisdictions, even if there is not a statute authorizing a minor to consent to certain services, the law may allow a provider to assist a minor without parental involvement under a theory known as the “mature minor doctrine.” Please contact the Victim Rights Law Center for more information about this doctrine.

If you are working with a minor survivor and the parent or guardian has legal decision-making authority over the minor, start here.

- **Who can legally consent to services?** Who has legal decision making–authority for a minor will depend on the law in your jurisdiction and can be informed by individual court cases.
 - **Implementation Questions:** Do you have a procedure in place to assess whether the parent or guardian has this decision–making authority? If parental consent is required, does your jurisdiction require the consent of both parents, or just one parent or guardian? What happens if the state is in the role of guardian (for instance, if you are seeking to represent a sexual assault survivor who is in foster care or in juvenile detention)?
- **Does the survivor want their parent or guardian present?** For some survivors, having the parent or guardian present can be reassuring and helpful. For others, especially when talking about intimate sexual details, or alcohol or substance use, having a parent or guardian present may be the last thing a minor wants. Even if you speak with the survivor privately, knowing that the parent or guardian may be able to access their information later may inhibit the survivor’s desire or ability to speak freely.
 - **Implementation Questions:** What is your policy about allowing the parent or guardian to be in the room during consultations? If your jurisdiction has a victim–advocate privilege, does having the parent or guardian in the room impact this or any other privilege (and does the survivor’s age or emotional state, for example, make a difference in determining whether there is a waiver)? Does your jurisdiction have a parent and child privilege? Do you discuss waiver of privilege with clients? With their parents or guardians?
- **How can you limit access?** If the minor wants to limit the information accessible to their parent or guardian, the parent or guardian may be willing to agree to this. The agreement can be useful for setting ground rules for services and expectations, but it is not necessarily legally binding. If the parents or guardians change their mind, they may still be able to access the minor’s records if the law allows them to do so.
 - **Implementation Question:** What do you do if the parent or guardian will not agree with what the minor wants?

Who Gets What Information and When?

Who Controls the Minor’s Information and Records? Most minors have less control over their personal information and records than an adult—particularly if they are unemancipated, or too young to consent to services. Here are some things to consider.

- **When does a minor have a right to keep information confidential?** As a general rule, a minor has a right to keep information confidential if they have the legal right to consent to the service. Therefore, you must know whether and when a minor may consent to the services you, and other professionals, provide. Become familiar with the law in your jurisdiction.
- **May a minor sign a release of information to give access to their records?** To serve a minor effectively, you may need to access or share documents or information outside of your organization, so you will need to determine who may sign the release of information. Your jurisdiction may have laws that address who may sign a release. VAWA-funded organizations need an informed, written release to share personally identifiable information (unless release is required by a statutory or court mandate). VAWA specifies who may provide this consent for minors as follows:
 - If a minor is permitted by law to receive services without the parent’s or guardian’s consent, the minor may consent to release information. A parent or guardian’s consent is not required. In the case of an unemancipated minor who is not legally permitted to consent to services, the release must be signed by the minor and a parent or guardian.
 - If a minor is incapable of knowingly consenting, the parent or guardian may provide consent. If a parent or guardian consents for a minor, the VAWA-funded program should attempt to notify the minor as appropriate.
 - Consent for release of information may not be given by a minor’s abuser.
 - Consent for release of information may not be given by the abuser of the other parent of a minor.
- **Can the survivor provide a valid release of information or otherwise authorize access?** Sometimes the law on minors’ authority to allow access to personally identifiable information will be unclear. Look at what your law says about comparable information or services. Seeking legal advice from a coalition or local attorney familiar with minors’ legal rights might help.
 - **Implementation Question:** If a minor may not authorize the release on their own, what is your policy on how and whether to access them? See also above regarding parental access to the survivor’s records and confidentiality.

What about mandatory reporting?

The analysis below can help you understand your mandatory reporting obligations and is useful to incorporate with your work with all survivors because of the likelihood of contact with minors—directly or indirectly. Refer also to the Mandatory Child Abuse Reporting flowchart.

Are you a mandatory reporter? Look at your law to determine if you, or others in your organization, must report child abuse. Pay attention to the specifics of your abuse reporting law. For instance, does the law only apply when you are working in your professional capacity or is the duty 24/7? Who else in your agency, coordinated community response, or referral network is, or is not, a mandatory reporter? Do you

have a policy in place to keep track of new employees and volunteers who are mandatory reporters as well as changes in reporter status?

Implementation Questions:

- **Is this survivor a minor whose abuse must be reported?** How is “child” defined in your mandatory reporting law? What if the minor is emancipated? Married? Pregnant? A parent? In the military?
- **Has the survivor experienced the sort of abuse or injury that requires a report?** How does your law define “abuse?” What level or type of harm meets the definition of abuse or injury that requires a report? Does the abuse the minor experienced meet the definition?
- **Are you exempt from reporting child abuse in certain cases?** Sometimes a disclosure that would otherwise fall under mandatory reporting laws is nonetheless protected from disclosure. For instance, disclosure may not be required if the disclosure is protected by a legal privilege.
- **Who is the best person or agency to receive the report?** If your law allows you to choose who to make a report to—for instance, the police or the Department of Human Services—would your client prefer you call one over the other? Learn how the different options may impact minors so you can help them decide to whom to make a report.
- **What exactly must you report?** Often laws will state what must be reported when a disclosure is required. Do not share more information than is legally required without the survivor’s consent.
- **What do you tell the minor about your reporting obligations, and when?** Tell the minor and, when appropriate, their parent or guardian, as soon as possible about your mandatory reporting obligations. Include what information must be reported. While this may limit disclosure by some survivors—particularly teens—the survivor needs to know this at the outset to make informed decisions. Survivor-centered and trauma-informed services require us to be led by the survivor’s wishes. Even if you do have to make a mandatory report, keep in mind that not everything a survivor tells you must be disclosed. Closely examine the laws in your jurisdiction before making any disclosures to ensure you’re only releasing the information you’re required to release.

How Can You Help Keep Survivor Information Safe?

Should the survivor become involved in legal proceedings, parties may seek information from your client files. Consider:

- **What is your organization’s response to subpoenas?** Make sure that everyone in your organization knows what to do when a subpoena comes in the door. Who at your organization is designated to receive subpoenas? What happens when they are out of the office when a subpoena arrives? The designated person will need to determine if the subpoena is valid and lawful, and if it was properly served. Someone will need to ask the minor (and/or, in some cases, their parent or guardian) how they want you to respond. If the subpoena seeks privileged information and the survivor does not want to waive the privilege, do not turn the documents over to the court or party without consulting an attorney and moving to quash the subpoena. If privileged records were requested, it can be very important to contest the subpoena even if you do not have any records or never provided services to the named survivor. (If you only contest subpoenas when you served the survivor and/or have relevant documents you may inadvertently be providing information to the other party.) If you receive VAWA, VOCA, or, in most cases, FVPSA funding, you

may not disclose individual client information without the informed, written, reasonably-time limited consent of the minor or the minor's parent or guardian, unless you are required to release the information subject to a statutory or court mandate. Even if the information must be released under a legally-issued subpoena, VAWA, VOCA, and FVPSA require you to make reasonable attempts to provide notice to the survivor and take steps necessary to protect their privacy and the safety of those affected by the disclosure.

- **Implementation Questions:** Does your organization have a policy in place about what to do if served with a subpoena? Has your organization taken steps to make sure that all employees know what to do if a subpoena is received?
- **How does your organization maintain files?** How you maintain your records will make a difference in what information actually gets turned over. Your agency should have a policy about what information goes and does not go into client files. For example, keep separate parent and child files, so disclosing information in a child's file does not require disclosing information in a parent's file. Practice minimal record keeping. Rather than writing down every detail of the case, document the action that the advocate did—for instance, “met with client for one hour to safety plan” or “discussed history of abuse and coping mechanisms.”
 - **Implementation Questions:** Does your organization have a clear policy on record keeping? How is that policy communicated to employees and volunteers, including new hires?

What Are Your Confidentiality Obligations if You Are Working with Schools? Your organization may be asked to come to schools to discuss abuse prevention or promote healthy relationships. Confidentiality issues may arise from this work because prevention educators are speaking to a room full of minors. Here are some things to consider.

- **Hold firm with your reporting obligations.** Schools may ask you to report child or other abuse as if you're an employee of the school. Under VAWA, the only exceptions to signed releases are statutory or court mandates. An inter-agency agreement is not a statutory or court mandate.
- **Discuss students' privacy with school officials in advance.** Plan to avoid inadvertently triggering a mandatory report. For example, instead of taking individual questions, invite students to write anonymous questions and turn them in to a “Question Box.” If possible, bring along an advocate who can provide confidential support. Ask any teachers who are mandatory reporters to step out of the room during a presentation. If adults who are mandatory reporters remain, explain what mandatory reporting obligations adults in the room may have at the start of a presentation.
- **Provide confidential options for minors.** We want minors to weigh their options and decide how they want to respond to violence to the extent possible given their age. Be sure you know about confidential referrals in the school (if any exist) and in the broader community, and how to access confidential hotlines. This is especially important if you are a mandatory reporter of child abuse. Your warning about being a mandatory reporter may scare students off; it's important that you share the available confidential resources to make sure that minors have someone to talk to on their own terms. [See our Toolkit script for how you might have this conversation with students at the start of a presentation.]
- **Know your policies before a student needs help.** Students often approach advocates for help after a child-focused presentation. However, even informal communications can trigger mandatory reporting. As always, be clear and direct with the students from the start about your role and your reporting requirements. Be specific, so the students can decide how much to tell you.

Other Things to Consider. While minors do not have the same privacy rights as adults, in some situations minors may have stronger privacy protections. For example, if a criminal case goes to trial, the survivor can often receive more protection than an adult survivor might—using pseudonyms, sealing court documents, confidentiality orders, and closing the courtroom. Please contact the Victim Rights Law Center or an attorney in your jurisdiction for more information.

Please also consider that policies are only useful when they are shared within your organization, and employees and volunteers are properly trained. Ask yourself: How can we make sure that all employees and volunteers are well-trained on our policies, including our policies about minor-survivors' privacy rights?

Note that while this toolkit covers several important privacy issues to consider when working with a minor survivor, there are dozens more issues that can come up in the course of serving minors, such as common law duties to warn and protect survivors, dealing with minors in detention, special considerations when working with immigrant populations, and others. For help on these, or other issues, please contact the Victim Rights Law Center's privacy technical assistance team: PrivacyTA@victimrights.org.



Minors' Privacy Toolkit

Working with Minors: A Privacy and Confidentiality Worksheet

This worksheet is a tool to help you and your OVW-funded victim services organization determine your readiness to provide confidential services for survivors of sexual assault, dating and domestic violence, and stalking, who are minors. It is designed as a companion tool to “Working with Minors: What to Know About Protecting Their Privacy Rights.” Working with your jurisdiction-specific Minors’ Privacy Rights Card,¹ we anticipate it will take about an hour to complete this worksheet. If you need additional help, please contact us. PrivacyTA@victimrights.org.

Who Has Legal Authority to Make Decisions?

This section will help you determine whether your organization’s privacy policies distinguish between serving minors who may, and minors who may not, consent to your services without parent or guardian involvement.

In our state, minors may consent for the following services at the given age (e.g., sexual assault services, victim advocacy, health care, mental health services, etc.):

Service	Age	Special Considerations (e.g., provider must notify parent after a set number of sessions)

There **is/is not** a statute or case law in my jurisdiction that addresses emancipation (circle one).

A minor in our state may be emancipated at age _____.

¹ To request a card for your jurisdiction(s), send a request to TA@victimrights.org.

A minor may also be treated as an adult under the law in the following circumstances:

Exception	Age	Effect under the law
Married		
Is pregnant or a parent		
In the military		
Other:		
Other:		
Other:		

In our jurisdiction, an emancipated minor **is/is not** still subject to the child abuse reporting laws (circle one).

If a minor is emancipated, it impacts the minor's access to our services in the following ways:

The law outlined above is reflected in the following program policies and procedures, e.g., we ask if a minor is emancipated on our intake form, we have a written policy about what to do if a minor is emancipated, etc.:

This section will help you determine the laws around privilege and privacy in your jurisdiction. This, in turn, will help you understand the scope of the services you may provide and the discussions you will need to have with a victim and a victim's parent or guardian.

In our jurisdiction, we **do/do not** have an advocate-victim privilege (circle one).

If a privilege does exist, I **do/do not** understand when a parent or guardian's presence may waive the privilege (circle one).

Who Gets What Information and When?

This section will help determine what information a minor controls. This will help determine the extent to which a minor may keep the records confidential.

In our state, the following information (e.g., health care records, mental health records) is deemed to belong to a victim at the following ages, and must be kept confidential:

Information	Age

If served with a subpoena for a minor's records, or for a staff member to testify about a minor we serve(d), our organization's policy is:

We have taken the following steps to make sure that all volunteers and paid staff know what to do if we receive a subpoena:

We **maintain/do not maintain** (circle one) a list of the individuals in our organization who are mandatory reporters. This document **is/is not** (circle one) regularly updated and distributed.

We **do/do not** have an option for minors to talk with someone at our organization, or be referred to someone at another organization, who is not a mandatory reporter (circle one).

We **do/do not** always tell minors and their parents or guardians about our mandatory reporting obligations before we ask them how we may help.

Our mandatory reporting statute defines “child” as:

In our jurisdiction, the levels and types of harm that meets the definition of “abuse,” “neglect,” or “injury” that requires a report are:

Our tribe, state, district, or territory defines these terms to mean:

We only report child abuse after making sure that we are required to do so by statute. **Yes/No** (circle one)

If I am a mandatory reporter, this is what I must report:

Information	Yes/No
Name of the child	
Address of the child	
Names and addresses of the child’s parents or guardians	
Age of the child	

Information that must be reported, cont.

Information	Yes/No
Nature and extent of the abuse	
Suspected abuser	
Suspected abuser's relationship to the child	
Explanation given for the abuse	
Contact information for the suspected abuser	
Other (specify):	
Other (specify):	
Other (specify):	

These are the options for where I must report the abuse (e.g., Department of Human Services, law enforcement—specify branch(es)).

We **do/do not** allow minors to decide who will receive any mandatory report we must make (circle one).

This section will help you think through your record-keeping practices, and whether they most effectively protect a minor victim's privacy concerns.

Do we have a policy on what information is/is not recorded in client records? (Attach a copy here.)

Yes **No**

Does every individual we serve have a separate file (even when we serve other family members)?

Yes **No**

This section will help you think about how to maintain confidentiality when working with schools.²

Do we make sure staff and volunteers doing outreach or providing services in schools, including prevention work, are trained on confidentiality and mandatory reporting?

Yes **No**

Do we make sure we tell students if we are mandatory reporters and our confidentiality responsibilities at the start of any presentation or discussion?

Yes **No**

Do we have an anonymous way for students to ask questions during our school presentations?

Yes **No**

² The Victim Rights Law Center also has a Coordinated Community Response (CCR) Toolkit that can help you think about minors' privacy protections in a CCR or other community partnerships context. You may request the CCR Toolkit at PrivacyTA@victimrights.org.

Mandatory Reporting of Child Abuse: A Flow Chart for OVW-Funded Advocates

Are you a “mandatory reporter”?

Review your statute to determine who must report child abuse in your jurisdiction. Pay attention to the particular requirements. Be sure to inform the survivor at the outset—before they make any disclosures—if you are a mandatory reporter.

YES

NO



STOP

Is the survivor someone whose abuse must be reported?

Is the survivor a minor about whom abuse must be reported? For example, a minor might not be subject to the mandatory child abuse reporting laws if the minor is emancipated, in the military, or a parent.

YES

NO

Has the survivor experienced “child abuse” as your statute defines it?

YES

NO

Are you exempt from reporting in this case?

For example, is the disclosure protected by a victim-advocate, therapist-patient, attorney-client, or other privilege that prohibits disclosure without survivor consent?

NO

YES

Report Must Be Made

Make the report to the appropriate agency. If there is a choice between agencies, discuss the options with the survivor. Ensure you are reporting only what is required, and that you are complying with VAWA or other funders' confidentiality requirements. You may report only the information required by the mandatory reporting statute unless the survivor gives informed consent, in writing, for you to release additional information. Remember to safety plan and offer the survivor ongoing support!

You may not report the abuse or otherwise breach a survivor's confidentiality without their written and informed consent.





Model Script: Mandatory Reporter Speaking at School

This is a model script for advocates who work in jurisdictions where they are mandatory reporters. In this script, the advocates are speaking to a group of young teens at school. We expect you will revise this script to fit your needs, including your style of speech, the needs of the minors you serve, the law in your jurisdiction, and the needs of your organization.

Hello, my name is _____, and I work at _____. Our organization provides free services to _____.

I'm here today to share some information about [domestic violence/sexual assault/stalking/child abuse]. This violence impacts many people in our community, including many of us in this room. Some of what I say may sound familiar to you personally, and you may have questions or concerns that you want to talk about.

I will give you a time to ask questions, but first I want to share some important, privacy-related information. Our organization believes strongly in a survivor's right to decide what's best for them and to control what happens to their information. Because of that, we want you to understand what happens with any information that you share with me today or with others at [Name of Organization] at a later time.

I am a mandatory reporter of child abuse. Generally, this means that if I know or suspect that a child has been or is being abused or neglected, I am required to report it [to the police or to child protective services]. Even though I am a mandatory reporter of child abuse, you can call our hotline confidentially, without giving any names or ages, if you have questions about something that happened to you or someone you know. If you do provide your name or your telephone number, this information might have to be shared if a report is required.

I want to be upfront about my mandatory reporting responsibilities because although sometimes reporting is exactly what a survivor wants, sometimes it's not. If you want to talk to someone about abuse that you, a friend, or family member is experiencing, I am happy to listen. But please know that depending on what you tell me, I may not be able to keep that information private; I may have to report it.

However, while I am a mandatory reporter, not everyone is. There are people who you can talk to privately and confidentially who do not have to make a report. You can find a list of some of these people, both at our organization and at organizations our staff have worked with and trust, on the handout I passed out.

We want you to choose the services that would be most helpful for you. We hope this presentation provides the information you need so you can get support if you need it.

Also, I have brought a “Question Box” with me. At the end of my presentation, I will ask each one of you to write something on a the pieces of paper I handed out: A question, a comment, some feedback on my presentation today – you decide. Then fold the paper and put it into the Question Box. Even if you don’t have a question for us, writing something down will help protect the privacy of those who do.

Finally, please take care of yourself both during and after this presentation. We try to create a safe space here; is there something else we could do that would help you feel more comfortable?

Any questions before I begin?



Minors' Privacy Toolkit

Model Policy Based On Mandatory Reporting Jurisdiction—Advocates Are Not Reporters

NOTE TO READER: The following is a policy that a fictitious program (for purposes of this sample we have named the program “Our Town Rape Crisis Center”) adopted in a jurisdiction where minors age 15 and up may consent to services and where advocates are not mandatory reporters. If you adapt this model policy, be sure to revise the age of consent, and any other particulars, to reflect the laws of your jurisdiction.

At Our Town Rape Crisis Center, we value the autonomy, privacy, and safety of all survivors we serve, including those who are minors. Survivors’ control of who has access to their personal information is an important component of survivor-centered services. Therefore, we work very hard to create space for crisis intervention work without triggering an unwanted mandatory report. Our agency policy reflects these values. We ask questions about emancipation, marital status, date of birth, and so forth, that let us know if a minor can legally consent to our services on their own, the extent to which services are confidential, and whether a minor is subject to any mandatory reporting laws in our jurisdiction, even if our advocates are not reporters.¹

Working Directly with the Survivor

Listening to every survivor’s story is a critical part of our work. Before a survivor tells us their story, though, we need to make sure they understand how we can, and cannot, protect the information they share with us. We tell them what we will do with the information they share with us before they provide the information to the extent possible.

We serve most minors who are 15 to 17 years old without additional consent.² Our state law requires that minors who are 14 and younger will need their parent or guardian’s permission to receive our services. We have two different consent to services forms. The adult form can also be used with minors age 15 and older; minors 14 and younger use the children and young teens consent form. If the minor can legally consent to our services, we will not involve the parent or guardian in the decision-making process unless the minor wishes.

If the minor is not able to legally consent to our services, but can understand them, we will ask the parent or guardian to sign our Parent/Guardian Minor’s Privacy form. This form can help protect a minor’s privacy by asking the parent/guardian to agree to respect the minor’s privacy wishes. If the parent/guardian is reluctant to sign, and we have the minor’s permission, we might agree to share information in specific, defined circumstances (for instance, if the minor is at immediate risk of serious physical injury).

If the parent or guardian refuses to sign the Parent/Guardian Release of Rights form, we will work with the survivor and the parent or guardian to try to provide the services needed without compromising our policies.

¹ We based the policy that follows upon a jurisdiction like Oregon, where community-based advocates are not mandated to report child abuse.

² A minors’ ability to understand and give consent to our services is not always closely linked with their age, so case-by-case exceptions can be made to this rule.

We will make every effort to advance the survivor's privacy interests within the confines of our legal obligations.

Mandatory Reporting

When working with minors, we need to know who is, and who is not, mandated to report child abuse to fully respect a survivor's right to confidentiality. Accordingly:

Advocates who work for Our Town Rape Crisis Center who do not fall within other categories of mandatory reporter (see paragraph 2, below) are not mandated to report child abuse. Therefore, our advocates do not make reports of child abuse unless we have a valid release of information to do so.

Our Town Rape Crisis Center typically has a licensed social worker and lawyer on staff, and other staff or volunteers who may be mandatory reporters. Always check the staff and volunteer roster before making a referral or discussing a case with another staff or volunteer if you are not completely certain about their mandatory reporting status. A complete list of mandatory reporters in our organization can be found in Appendix I. Further, our child abuse mandatory reporting law states that married minors are not subject to the mandatory reporting law. We will review the minor's status before speaking with a minor.

When an employee or volunteer who is a mandatory reporter meets with an unmarried minor, they must disclose their status as a mandatory reporter before talking with the survivor. The survivor should be given the opportunity to meet with someone else in the organization who is not mandated to report.

A minor and parent or guardian should be informed that if they work with an outside organization, either through us or on their own, the person(s) with whom they are working may have mandatory reporting obligations.

As a general rule, communications between survivors and employees and volunteers of our organizations who are certified victim advocates are confidential and privileged.

Information Sharing

Our agency policy is that minors, as with other people we serve, are entitled to the following regarding their personal information and communications with our organization's employees and volunteers:

The information that the survivor provides to our organization will be kept confidential to the greatest extent allowed by law.

Our policy is to practice minimal record keeping, and to keep separate files for each individual seen, including parents and children. Notes will be kept to a minimum, and only general details will be recorded except in rare circumstances and with a supervisor's approval.

If served with a subpoena, we will ask the minor and/or parent or guardian how they want us to respond and will work to assert legal arguments that further the survivor's interests. If the subpoena seeks privileged information and the survivor does not want to waive the privilege, we will not turn the documents over to the court or party without consulting with an attorney. If required to turn information over, we will make reasonable attempts to provide notice to the victim and take steps necessary to protect the privacy and safety of those affected by disclosure.

The survivor has control over what information to provide to the organization, whenever possible. If, due to age or ability, the survivor is unable to meaningfully understand what information should be shared, the survivor's parent or guardian will make the decision.

We will not provide personal information to other agencies or individuals without written permission. However, some general, personally identifying information about the types of services provided and overall demographics must be shared with the agencies that fund our organization.

We will follow the requirements set forth in the Violence Against Women Act regarding releases of information: (1) if a minor is permitted by law to receive services without the parent's or guardian's consent, the minor may consent to release information without additional consent; (2) in the case of an unemancipated minor who is not legally permitted to consent to services, the release must be signed by the minor and a parent or guardian; (3) if a minor is incapable of knowingly consenting, the parent or guardian may provide consent. If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate; (4) consent for release of information may not be given by a minor's abuser; and (5) consent for release of information may not be given by the abuser of the other parent of a minor.

After intake, the survivor may choose to be referred to our partner agencies. We work cooperatively with these organizations to provide greater resources for the survivors we serve. We will not share a survivor's personally identifying information with any outside provider unless we have written permission. Before information is shared, we will discuss and agree to what information will be shared, with whom, and for what purpose. This agreement will be recorded on our release of information form, which will be signed (see Paragraph 6, above). The release may be cancelled at any point, verbally or in writing, in which case no additional information will be shared going forward.



Minors' Privacy Toolkit

Model Policy Based On Mandatory Reporting Jurisdiction—Advocates Are Reporters

NOTE TO READER: The following is a policy that a fictitious program (for purposes of this sample we have named the program “Our Town Rape Crisis Center”) adopted in a jurisdiction where minors age 15 and up may consent to services and advocates are mandatory reporters. If you adapt this model policy, be sure to revise the age of consent, and any other particulars, to reflect the laws of your jurisdiction.

At Our Town Rape Crisis Center, we value the autonomy, privacy, and safety of all survivors we serve, including survivors who are minors. Survivors control of who has access to their personal information is an important component of survivor-centered services. Therefore, we work very hard to create space for crisis intervention work without triggering an unwanted mandatory report. Our agency policy reflects these values. We ask questions about emancipation, marital status, date of birth, and so forth, that let us know if a minor can legally consent to our services on their own, the extent to which services are confidential, and whether the minor is subject to our mandatory reporting law.¹

Working Directly with the Survivor

Listening to every survivor’s story is a critical part of our work. Before a survivor tells us their story, though, we need to make sure they understand how we can, and cannot, protect the information they share with us. We tell the minors we serve what we will do with the information they share with us before they provide that information to the extent possible.

We directly serve most minors who are 15 to 17 years old.² Minors who are 14 and younger will need their parent or guardian’s permission to receive our services. We have two different consent to services forms. The adult form can be used by minors age 15 and older; minors 14 and younger need to use the children and teen consent form. If the minor can legally consent to our services, we will not involve the parent or guardian in the decision-making process unless the minor wishes.

If the minor cannot legally consent to our services, but can understand them,³ we will ask their parent or guardian to sign our Parent/Guardian Release of Rights form. This form can help protect the minor’s privacy: (1) by limiting the parent or guardian’s access to conversations between the survivor and our organization; (2) by limiting the parent or guardian’s access to the survivor’s documents and records; and (3) by allowing the minor to be in charge of what information will be released to our organization and

If the parent or guardian refuses to sign the Parent/Guardian Release of Rights form, we will work with the survivor and the parent or guardian to try and provide the services needed without compromising our policies.

¹ We based the policy that follows upon a jurisdiction, like Colorado, where advocates are mandated to report child abuse.

² Not all minors’ ability to understand our services is closely linked with their age. Case-by-case exceptions can be made to this bright-line rule.

³ See footnote 2.

We will make every effort to advance the survivor's privacy interests within the confines of our legal obligations.

Mandatory Reporting

When working with minors, we must follow our state's mandatory child abuse reporting laws, while still respecting the survivor's right to confidentiality. Accordingly:

Before working with a minor, as with all survivors, the service provider will disclose whether they are mandated to report child abuse. If they are, the provider will disclose what these obligations are, and what information must be reported, as well as what information does *not* need to be reported so that they can choose what they will share with us. On initial contact, we create space for our discussion about mandatory reporting by meeting survivors' immediate needs for comfort, and then presenting our mandatory reporting obligations before seeking any information about their circumstances. Our intake process also ensures that no information is inadvertently shared before we discuss mandatory reporting, for example, by asking open-ended questions on an intake form, or in conversation with intake staff, before we discuss mandatory reporting.

The survivor should be given the option to work with someone who is not a mandatory reporter, even if that individual is not at our organization. An up-to-date list of names of appropriate organizations or individuals will be made available to the survivor.

If a mandatory report of child abuse laws must be made, we will not disclose more information than is required by law unless we have the survivor's consent.

Information Sharing

Regardless of who we contract with, our agency policy is that minors, as with other people we serve, are entitled to the following regarding their personal information and communications with our organization's staff and volunteers:

The information that the survivor provides to our organization will be kept confidential to the greatest extent allowed by law.

Our policy is to practice minimal record keeping, and to keep separate files for each individual seen, including parents and children. Notes will be kept to a minimum, and only general details will be recorded except in rare circumstances and with a supervisor's prior approval."

If served with a subpoena, we will ask the minor and/or parent or guardian how they want us to respond and will work with our attorney to assert legal arguments that further the victim's interests. If the subpoena seeks privileged information and the survivor does not want to waive the privilege, we will not turn the documents over to the court or party without consulting with an attorney and moving to quash the subpoena. If required to turn information over, we will make reasonable attempts to provide notice to the victim and take steps necessary to protect the privacy and safety of those affected by disclosure.

The survivor has control over what information to provide to the organization, whenever possible. If, due to age or ability, the survivor is unable to meaningfully understand what information should be shared, the survivor's parent or guardian will make the decision.

We will not provide personal information to other agencies or individuals without the survivor's permission. However, some general non-personally identifying information about the types of services provided and overall demographics must be shared with the agencies that fund our organization.

We will follow the requirements set forth in the Violence Against Women Act with regard to the release of information: (1) if a minor is permitted by law to receive services without the parent's or guardian's consent, the minor may consent to release information without additional consent; (2) in the case of an unemancipated minor who is not legally permitted to consent to services, the release must be signed by the minor and a parent or guardian; (3) if a minor is incapable of knowingly consenting, the parent or guardian may provide consent. If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate; (4) consent for release of information may not be given by a minor's abuser; (5) consent for release of information may not be given by the abuser of the other parent of a minor.

After intake, the survivor may want to be referred to other agencies. We work cooperatively with these organizations to provide greater resources for the survivors we serve. We will not share a survivor's personally identifying information with any outside provider unless the survivor agrees in writing. If the survivor agrees to have information shared with other organizations, we will discuss and ask the survivor to agree to what information will be shared, with whom, and for what purpose. This agreement will be recorded on our release of information form, which will be signed (see Paragraph 6, above). The survivor can cancel a release at any point, verbally or in writing, in which case no additional information will be shared going forward.