



# Illinois

## 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 Illinois?** Under Illinois law, a minor is a person under the age of eighteen. 750 Ill. Comp. Stat. § 30/3-1.

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**How does emancipation work in Illinois?** In Illinois, a minor must be a “mature” (between sixteen and eighteen years old and demonstrated the ability and capacity to manage their own affairs) and must petition for emancipation. There are de-facto emancipations, however. The test is whether the parental rights to care, custody, and earnings have been entirely surrendered and parental duties have been renounced. *Cincinnati Ins. Co. v. Argubright*, 151 Ill. App. 3d 324, 330 (App. Ct. Ill. 1986).

| Emancipation statute             | Minor as adult for these purposes   | Relevant case law  |
|----------------------------------|---|--|
| 750 Ill. Comp. Stat. § 30/1 – 11 | Contracts; any other rights and responsibilities specified in the order of the court (not to be inconsistent with specific age requirements of law) | An emancipated child's medical expenses are not family expenses. <i>Proctor Hosp. v. Taylor</i> , 279 Ill. App. 3d 624, 628 (App. Ct. Ill. 1996).<br><br>A minor may also be deemed emancipated if incarcerated. In <i>re Marriage of Baumgartner</i> , 237 Ill. 2d 468 (Ill. Sup. Ct. 2010).<br><br>Marriage or entering the armed forces also may cause de-facto emancipation. <i>Proctor Hosp.</i> , 279 Ill. App. 3d at 628. |

<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 Illinois inform a minor's right to consent to services?

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| <p><b>Reproductive health</b></p>                   | <p>Abortion: For persons under eighteen, health care provider must notify an adult family member forty-eight hours before performing an abortion (subject to some exceptions). 750 Ill. Comp. Stat. § 70/15. The minor must consent to abortion. 750 Ill. Comp. Stat. § 70/30.</p> <p>Birth control services are available to minor who is married, a parent, pregnant, has parental consent, if failure to provide services would create a serious health hazard, or if the minor is referred by a physician, member of the clergy, or planned parenthood agency. 325 Ill. Comp. Stat. § 10/1.</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><b>General medical</b></p>                       | <p>A married minor, parent who is a minor, or minor who is pregnant “is deemed to have the same legal capacity to act and has the same powers and obligations as has a person of legal age.” 410 Ill. Comp. Stat. § 210/1.</p>  |
| <p><b>Mental health and chemical dependency</b></p> | <p>If a minor is twelve years old or older, they may receive mental health counseling or psychotherapy on an outpatient basis. If under seventeen years old, limited to eight sessions before parental consent is needed (unless getting consent is detrimental to minor's well-being). 405 Ill. Comp. Stat. § 5/3-501. Minor may be admitted to mental health facility as inpatient on own application if sixteen years old or older. 405 Ill. Comp. Stat. § 5/3-502. When admitted by parent or medical professional, a minor twelve years old or older may object to the admission. 405 Ill. Comp. Stat. § 5/3-507.</p> <p>A minor twelve years old or older may consent to treatment or rehab for drug and alcohol abuse, and the minor's family may be involved only with the minor's consent. 410 Ill. Comp. Stat. § 210/4.</p> |
| <p><b>Other</b></p>                                 | <p>HIV Testing: Minors can consent to anonymous HIV testing, but healthcare provider can contact parents if in the best interest of the minor. 410 Ill. Comp. Stat. § 305/9.</p> <p>Sexual assault or abuse victim: Parental consent not needed for medical care, counseling, diagnosis, and treatment. Minor may consent. 410 Ill. Comp. Stat. § 210/3(b).</p> <p>Emergency treatment: If obtaining parental consent is not reasonably feasible under circumstances without affecting minor's health, minor may consent to own medical, dental, chiropractic, optometrist, or other emergency treatment.</p>   |

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

### What are the child abuse mandatory reporting obligations in Illinois?

**Who is a mandatory reporter of child abuse?** Illinois' Abused and Neglected Child Reporting Act (325 Ill. Comp. Stat. § 5/4-4) contains broad categories of mandatory reporters, such as:

- Medical personnel
- Social services (including mental health personnel)
- Crisis intervention personnel (including domestic violence personnel)
- Education personnel
- Recreation or athletic programs personnel
- Law enforcement personnel
- Any member of the clergy

**How is “child” defined for purposes of Illinois’s mandatory reporting law?** A child is under the age of eighteen, unless legally emancipated by reason of marriage or entry into a branch of the United States armed services. 325 Ill. Comp. Stat. § 5/3.

**How is “abuse” defined?** “Abused child” means “a child whose parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent:”

- a. inflicts or allows to be inflicted non-accidental physical injury which impairs physical or emotional health;
- b. creates a non-accidental substantial risk of death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function;
- c. commits or allows a sex offense;
- d. commits or allows acts of torture;
- e. inflicts excessive corporal punishment or if an agency is prohibited from using corporal punishment, its employee inflicts corporal punishment upon a child or adult resident;
- f. commits or allows an act of female genital mutilation of the child;
- g. gives a controlled substance to a child except when dispensed in a manner that complies with the prescription; or
- h. commits or allows involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons against the child.

325 Ill. Comp. Stat. § 5/3.

**When must a mandatory reporter make a report?** A report must be made immediately. 325 Ill. Comp. Stat. § 5/7.

**What must be reported if I am required to report child abuse?** The report must include, if known, the name and address of the child and their parents or other persons with custody; the child's age; the nature of the child's condition including any evidence of previous injuries or disabilities; and any other information that the person filing the report believes might be helpful in establishing the cause of such abuse or neglect and the identity of the person believed to have caused it. 325 Ill. Comp. Stat. § 5/7.9.

**To whom must I make a report when I am required to do so?** All reports of suspected child abuse or neglect must be made immediately by telephone to the central register, or in person or by telephone through the nearest Illinois Department of Children and Family Services office. 325 Ill. Comp. Stat. § 5/7.

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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.

Illinois statutes provide a *permissive* duty to warn when a specific threat of physical violence has been made against a reasonably identifiable victim or victims. 740 ILCS 110/11. As a matter of common law, Illinois generally rejects any duty to warn, and has only imposed one in circumstances where the threat is made to a physician who is also treating and therefore to some degree responsible for the identified 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?** Yes. Illinois has a rape crisis counselor-victim privilege (735 Ill. Comp. Stat. § 5/8-802.1), a victims of violent crimes confidentiality provision that provides some of the protections of a privilege (735 Ill. Comp. Stat. § 5/8-802.2), and a confidential advisor for students at higher education institutions privilege (735 Ill. Comp. Stat. § 5/8-804).

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**Does a parent or guardian's presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Illinois?** No, as long as the parent or guardian is deemed to be a person who "further expresses the interests of the victim at the time of the communication." 735 Ill. Comp. Stat. § 5/8-802.1(c)(1).

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**Does Illinois have a privilege that protects the privacy of communication between a parent and a child?** No. *Illinois v. Sanders*, 457 NE. 2d 1241, 1244-46 (Ill. Sup. Ct. 1983).

Note that the 7th Circuit does recognize a parent-child privilege, but not in the context of a criminal proceeding. *U.S. v. Davies*, 768 F. 2d 893 (7th Cir. 1985).

**Who must sign a release of a minors' 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).