



### Victim Rights Law Center

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## **PROVIDING CARE TO SEXUAL ASSAULT VICTIMS WHO ARE MINORS: A Privacy and Confidentiality Tool for SANEs, Advocates and Other Providers**

Serving victims of sexual assault who are minors often present unique and complex issues regarding capacity, privacy, and informed consent. Two of the most challenging issues for SANEs, Advocates, and other first responders who serve minor victims are: (1) Determining who may legally consent to the service to be provided; and (2) Whether the services are confidential to the minor.

Other considerations that frequently arise include whether the minor may *refuse* the service the parent or guardian is requesting, whether a parent and/or police need to be informed of the sexual assault, and if a report is required what information the provider may and may not release. It is also important to know the emancipation laws and criteria in your state and how they may impact a SA victim's right. An emancipated or married minor victim, or a victim in the military, may have additional rights.

If your state or tribal sexual assault or dual coalition has a lawyer on staff, that lawyer can either provide the answers to many or all of the questions below, or help you determine where the answers may be found. Local centers and programs may help provide practical information about local practice in the community. Community-based victim advocates will want to be familiar with the law as well as their Coalition standards and practices "on the ground." SANEs will also want to know the relevant laws in addition to your ethical and organizational obligations. In addition, many hospitals have in-house legal counsel and they may be able to provide guidance to SANEs and other medical providers.

There are national resources to help you navigate the relevant laws and regulations too! The Center for Adolescent Health Law ([www.cahl.org](http://www.cahl.org)) has published a Monograph that includes all states' laws regarding Minors and Consent to health related services. The Guttmacher Institute has a chart you can download free from the web that summarizes in brief states' laws regarding minors' access to prenatal, contraceptive, STI (sexually transmitted infections) and abortion services. The chart is online at: [http://www.guttmacher.org/statecenter/spibs/spib\\_OMCL.pdf](http://www.guttmacher.org/statecenter/spibs/spib_OMCL.pdf). The Victim Rights Law Center provides free legal technical assistance to OVW grantees – email us at [TA@victimrights.org](mailto:TA@victimrights.org)!

For each of the questions that follow, you will want to determine: (a) whether a minor in your jurisdiction may consent to the services; and (b) whether the services may be provided in confidence. For example, in California a physician may provide sexual assault related care to a minor with the minor's consent, but

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must make reasonable efforts to contact the parent or guardian, and document the attempt in the patient's file. (This requirement does not apply if the parent or guardian is reasonably believed to have committed the rape or assault.) In Kansas, the parent must be notified in writing. In New Jersey, parents must be notified when sexual assault care is provided unless it is not in the child's best interest.

The attached chart is a template for identifying the information it is helpful to know if you are going to provide sexual assault-related services to minors. Community-based victim advocates will want to be familiar with the law as well as their coalition standards and practices "on the ground." SANEs will also want to know the relevant laws as well as any ethical, professional and employer obligations. In addition, below are some considerations specific to mandatory reporting, which may also impact a minors' privacy rights.

## **Minors and Mandatory Reporting**

If medical, forensic and/or mental health, advocacy or crisis services may be provided by someone who is a mandatory reporter, here are some additional questions to consider:

- ✓ Are you a mandatory reporter of child abuse?
- ✓ Even if you're not mandated to report, are others who are involved in the victim's care mandated to report?
- ✓ Does the harm fall within your state, tribe or territory's definition of "child abuse"?
- ✓ If so, when do you have to report, to whom, and what has to be reported?
- ✓ Are your communications with the minor privileged (and if so on what basis)?
- ✓ Does the minor or the parent hold the privilege?
- ✓ Who may waive the privilege?
- ✓ If your communications are privileged is there an exception to the privilege such that you're still required to report the child abuse?
- ✓ May police take a report without parental knowledge or consent?
- ✓ May police interview this minor victim without parental permission?
- ✓ May child protective services interview minor victims without parental permission?
- ✓ Is the minor a parent, in the military, or living apart from her or his parents (and if so does this impact the minor's rights (and how))?