1. **What mandatory reporting laws should I be aware of in my jurisdiction?**

   New York law defines certain categories of individuals who must report abuse or injury to the Statewide Central Register of Child Abuse and Maltreatment, the Vulnerable Persons’ Central Register, or law enforcement. The chart below summarizes certain providers’ mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only mandatory (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim’s personally identifying information without consent only if disclosure is mandated by a statute or court order.)

<table>
<thead>
<tr>
<th>What must be reported?</th>
<th>Social worker</th>
<th>Health care provider</th>
<th>Mental health professional</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child abuse</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>N.Y. Soc. Serv. Law § 413</td>
</tr>
<tr>
<td>Vulnerable adult abuse</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>N.Y. Soc. Serv. Law §§ 488, 491; See also N.Y. Pub. Health Law § 2803-d</td>
</tr>
<tr>
<td>Client is danger to self or others</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>N.Y. Mental Hyg. Law § 9.46</td>
</tr>
<tr>
<td>Firearm or serious knife injury</td>
<td></td>
<td>✓</td>
<td></td>
<td>N.Y. Penal Law § 265.25</td>
</tr>
</tbody>
</table>

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?

Several laws govern mandatory reporting obligations in Indian Country and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands, or who suspect that child abuse has occurred or will occur in Indian Country. Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.
May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? It depends on whether the communication was intended to be confidential and whether the victim’s expectation of confidentiality was reasonable. New York recognizes several categories of privileged communications, including rape crisis counselor and client, attorney and client, physician and patient, nurse and patient, psychologist and client, and social worker and client. Regarding the attorney-client privilege, the New York Court of Appeals has ruled that the scope of the privilege depends on whether the client had a reasonable expectation of confidentiality under the circumstances. Similarly, the Court has ruled that the presence of a third person during a communication with a physician does not waive privilege if, in the light of all the surrounding circumstances, the communication was intended to be confidential.

May an interpreter be present during a victim’s privileged communications with a rape crisis counselor, attorney, mental health professional, or health care provider without waiving the victim’s privilege to keep those communications confidential? New York law does not directly address this question. The New York Court of Appeals has held that communications made to an attorney through a hired interpreter, or one serving as an agent of either the attorney or client to facilitate communication, generally will be privileged.

Are a victim’s privileged communications with a rape crisis counselor, attorney, mental health professional, or health care provider protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney, physician or nurse, psychologist, and rape crisis counselor will remain privileged, because New York law indicates that these privileges survive the death of the client or patient. The licensed social worker-client privilege is silent as to this issue.

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? An employee’s role determines when a report of gender-based violence, e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking, must be made to a Title IX Coordinator. Under Title IX, a “responsible employee” has a duty to report such violence if they “knew, or in the exercise of reasonable care should have known, about the harassment.” Responsible employees include anyone who has authority to address the violence; who has a duty to report other misconduct that violates school policy; or whom a student
May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information without patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations. Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>What may be disclosed</th>
<th>Limitations on what may be disclosed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena</td>
<td>Information authorized by the court order, court-ordered warrant, subpoena, or summons</td>
<td>Disclosure may be limited by New York’s physician-patient privilege</td>
</tr>
<tr>
<td>Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law</td>
<td>Information authorized by the administrative demand</td>
<td>LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used</td>
</tr>
<tr>
<td>LE asks about a patient by name</td>
<td>The patient’s location in the health care facility and general medical condition</td>
<td>Information must not be released if the patient has opted out</td>
</tr>
<tr>
<td>LE requests information to identify or locate a suspect, fugitive, witness, or missing person</td>
<td>Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description</td>
<td>Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue</td>
</tr>
<tr>
<td>LE requests information about a crime victim who cannot consent due to incapacity or emergency</td>
<td>Information that LE states is needed to determine whether a crime has occurred</td>
<td>Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests</td>
</tr>
</tbody>
</table>
How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress and invasion of privacy. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

1 We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.
2 Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.
5 A list of OWV technical assistance (TA) providers, including tribal TA providers, is available at https://ta2ta.org/directory.html.
6 N.Y. C.P.L.R. § 4510.
7 N.Y. C.P.L.R. § 4503.
8 N.Y. C.P.L.R. § 4504.
9 Id.
10 N.Y. C.P.L.R. § 4507.
11 N.Y. C.P.L.R. § 4508.
17 N.Y. C.P.L.R. § 4507 defines the psychologist-patient privilege as equivalent to the attorney-client privilege. Accordingly, the common law decisions holding that attorney-client privilege survives the client’s death apply to the psychologist-patient privilege.
18 See N.Y. C.P.L.R. § 4510 (privilege may be waived by the personal representative of a deceased client).
19 N.Y. C.P.L.R. § 4508.
20 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.