

What You Need to Know: Mandatory Reporting Requirements, Law Enforcement, and Patient Confidentiality in Pennsylvania

Note: Laws around abortion are changing rapidly. This fact sheet is up-to-date as of August 1, 2022.

Who wrote this guide and why?

If/When/How: Lawyering for Reproductive Justice is a legal advocacy organization. We created this fact sheet in part because the most common cause of the criminalization of people who self-manage their own abortion care is unnecessary reports to law enforcement by medical providers. In addition, we frequently field questions from providers who are concerned about what they may need to report.

We know providers share our concern that risk to patients can be high when a report to law enforcement is triggered. In the case of reporting self-managed abortion, the consequences to patients might include jail time, losing custody of their children, a criminal record, or fines – all of which are unjust responses by an overzealous and racially biased system and frequently violate people’s rights.

Failure to report when it is necessary also carries the risk of liability, so we want providers to feel confident in their ability to discern when reporting is legally required, and what must be included.

What Is This Fact Sheet About?

Confidentiality is central to the provider-patient relationship and a core part of medical ethics. In addition, providers know that in some cases, violating patient confidentiality unnecessarily may carry professional or legal penalties. This brief fact sheet is meant to give an overview of some of the major mandatory reporting requirements and where they may intersect with patient privacy — with a specific focus on self-managed abortion. This fact sheet does not contain legal advice, and we recommend that providers who have further questions about their reporting requirements consult an in-state attorney for more information.

Know your mandatory reporting obligations, and where they intersect with patient privacy

This fact sheet covers most mandatory reporting requirements that are in Pennsylvania laws. Your hospital, clinic, or practice may have additional reporting requirements that you should be familiar with. Providers can help patients maintain their agency and confidentiality while fulfilling their mandatory reporting obligations by:

- Not reporting patients when reporting is not required
- Informing patients of what the provider may have to report prior to treating the patient
- Carefully considering what information is necessary to document in a medical chart

Providers can also help protect their patients from unjust criminalization by ensuring that their hospital or clinic reporting policies do not conflict with state laws on medical privacy.

Major Mandatory Reporting Requirements in Pennsylvania¹

Crime: Self-managed abortion is not a crime. Pennsylvania health care providers are not required to report crimes other than child abuse or certain results of crimes, such as serious injuries as described elsewhere in this fact sheet.

Child and vulnerable adult abuse: Child and vulnerable adult abuse: A minor or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse. Though legal requirements for child and vulnerable adult abuse requirement are fraught with bias, in particular toward poor families and families of color, all people working in a hospital who admit, examine, or care for a minor patient must report to the Pennsylvania Department of Human Services when they have “reasonable cause to suspect”² that a minor is a victim of child abuse.³ Because suspicion naturally stems from our biases, health care providers should thoroughly examine any potential bias at play in their suspicion when deciding whether or not a report is required under the law. Even if a provider decides to make an abuse report, the fact that a minor self-managed their own abortion would not ordinarily need to be included in a report. Health care providers are NOT mandatory reporters for suspected vulnerable adult abuse and neglect. Providers are not required to report domestic violence or sexual assault in Pennsylvania unless the victim is a minor.

Statutory rape: If a provider does need to report a statutory rape, the fact that the patient attempted to end the pregnancy is not relevant to the investigation. Pennsylvania requires all health care providers to report statutory rape as child abuse.⁴ Statutory rape includes sexual activity with a minor younger than 13, as well as sexual activities between a minor aged 13 to 15 if their partner is at least four years older. In general, unless providers know the age of the patient’s partner, they lack the information required to make a report. The age of a minor’s sexual partner is rarely clinically significant to care provision, however, if a minor is younger than 13 and presents with a pregnancy or otherwise tells the provider they are having sex, that would qualify under Pennsylvania law as an automatic trigger for child abuse reporting.

Certain traumas and injuries: Self-managed abortion is not a reportable injury. Pennsylvania providers must report wound or injury causing death or serious bodily injury; a wound inflicted with a deadly weapon; or an injury that is the result of a crime, such as assault.⁵

Overdoses and drug use during pregnancy: Pennsylvania does not require overdose or drug use reporting. Per a Pennsylvania Supreme Court case, criminalized drug or alcohol use during pregnancy is not child abuse.⁶

Self-harm or harm to others: In limited circumstances, Pennsylvania case law requires mental health care providers to report when someone is a serious danger to others.⁷ There is not currently a reporting requirement around self-harm.

Abortion:⁸ It is never necessary to report a patient’s intention to self-manage an abortion. Pennsylvania requires abortion reporting for vital statistics purposes,⁹ including specific requirements around reporting abortion complications.¹⁰ Generally, physicians are only required to report abortions that they themselves perform,¹¹ though all physicians must report abortion complications they treat.¹² The intention to self-manage — or the patient’s past, current, or intended self-managed abortion — is not information a physician is required to provide under state law. There are also special reporting and testing requirements for fetal tissue removed after an abortion.¹³

Major Mandatory Reporting Requirements in Pennsylvania

Fetal death: Under the current definition of “fetal death,” providers are not clearly required to report any induced termination of pregnancy, including self-managed abortion. Pennsylvania law requires fetal death reporting where a fetus is 16 weeks or more gestational age.¹⁴ “Personal information” about the death should be “supplied by the person best acquainted with the facts.”¹⁵ The death must be medically certified by the attending physician, certified registered nurse practitioner, physician assistant, or the coroner in the event of a referral.¹⁶ A referral to the coroner is required where no medical provider attended the fetal death.¹⁷

Patient safety reports: Note that Pennsylvania also has an extensive patient safety reporting scheme involving required reports for medication errors, serious events, and incidents. Although it is possible that care after a self-managed abortion may require a report under this scheme, there is no requirement to report the self-managed abortion itself, but there may be a requirement to report incidents leading up to or occurring during treatment of the self-managed abortion.¹⁸

Cited Resources

1. This fact sheet focuses on mandatory reporting requirements that involve law enforcement or an analogous health authority. It does not include mandatory reporting requirements concerning communicable diseases, childhood blood lead levels, hospital-associated infections, etc. The fact sheet intends to cover reporting requirements for physicians, nurses, physician assistants, midwives, social workers, mental health professionals, and emergency medical technicians. If you know of a mandatory reporting requirement for these professionals in Pennsylvania involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
2. Pa.C.S. § 6311.
3. Child abuse includes both physical bodily injury and “serious mental injury” due to an act or failure to act, as well as neglect and sexual abuse. 23 Pa.C.S. § 6303. Though the statute does not indicate that “serious” bodily injury is required here, the fact that the following definitions section only defines “serious bodily injury” and not “bodily injury” indicates that serious bodily injury is what a provider would be required to report. Serious bodily injury is that which “creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.” Serious mental injury is “a psychological condition...that renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child’s life or safety is threatened; or seriously interferes with a child’s ability to accomplish age-appropriate developmental and social tasks.” Child abuse also specifically includes a “failure to provide a child with adequate essentials of life, including food, shelter or medical care,” however, if those factors are beyond the control of the person caring for the child, there is a specific exclusion. 23 Pa.C.S. § 6304. HCPs working in an institution should know that Pennsylvania first requires them to notify the person “in charge” of their institution or that person’s designated agent, and that person will facilitate the report. 23 P.A. § 6311. The only people who can be perpetrators of child abuse are parents; step-parents or former step-parents; current or former “paramours” of the child’s parents; people 14 or older who live with the child; relatives of the child; traffickers; or a person 14 or older responsible for the child’s welfare via a service (child-care, school, program); or a person 18 or older responsible for the child’s welfare. 23 Pa.C.S. § 6303. However, anyone can be a perpetrator of sexual abuse of a minor.
4. 23 Pa.C.S. § 6303 including “sexual abuse” which is defined under this same statute to include statutory rape. Statutory rape includes any sexual activities with a minor under 13 years of age (Pa.C.S. § 3121(c)), as well as sexual activities between a minor aged 13 to 15 if the person is at least 4 years older than the minor. Pa.C.S. § 3122.1(a). See also Pa.C.S. § 3123(a)(7) (involuntary deviate sexual intercourse); Pa.C.S. § 3125(a)(8) (aggravated indecent assault); and Pa.C.S. § 3126(a)(8) (indecent assault).
5. 18 Pa.C.S. § 5106. “Serious bodily injury” is defined under Pennsylvania law as “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” “Deadly weapon” is defined as “[a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.” 18 Pa.C.S. § 2301.
6. In re L.J.B., 199 A.3d 868 (Pa. 2018), see also Nicole Johnson, *Illegal Drug Use While Pregnant is Not Child Abuse*, American Bar Association (April 4, 2019), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/illegal-drug-use-while-pregnant-is-not-child-abuse/.
7. Pennsylvania mental health providers are required to warn third parties where there is a “serious threat or intent to kill or seriously injure an identified or readily identifiable person or group of people” (*Emerich v. Philadelphia Ctr. for Human Dev.*, 554 Pa. 209, 320-31 (1998), quoting 49 Pa.Code § 41.61) where a group is “a smaller, finite, and relatively homogenous group united by a common circumstance.” *Maas v. UPMC Presbyterian Shadyside*, 234 A.3d 427, 439 (2020). For the purposes of this case law, a fetus is not a person.
8. “The use of any means to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this chapter, abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.” 18 Pa.C.S. § 3203.

Cited Resources (continued)

9. 18 Pa.C.S. § 3214. Facilities that perform abortions must also report quarterly the total number of abortions performed each quarter. *Id.* The wording of the laws indicates that physicians performing abortions in a hospital need only provide information for the form, and the hospital will submit those reports. However, physicians who are sole proprietors or otherwise provide abortions outside of a hospital must fill out the forms themselves.

10. 18 Pa.C.S. § 3214; see also 28 Pa. Code § 29.38.

11. The Pennsylvania code does not currently contemplate abortion reporting requirements for abortions performed by others. 18 Pa.C.S. § 3214.

12. 18 Pa.C.S. § 3214; see also 28 Pa. Code § 29.38.

13. For a first trimester abortion, tissue removed may, as needed, be subject to an examination to determine if a pregnancy existed. 18 Pa.C.S. § 3214(c). If no fetal remains are found, the physician or another qualified person that examined the tissue must notify the Department of Health within 15 days on a form supplied by the Department that is specific to pathology. 18 Pa.C.S. § 3214(c)-(d). If an abortion is performed after the first trimester but prior to viability, all pregnancy tissue must be sent to a board eligible or certified pathologist for analysis. 18 Pa.C.S. § 3214(c). The pathologist must report to the Department of Health and to the physician who performed the abortion if there is evidence of viability or live birth. 18 Pa.C.S. § 3214(c)-(d).

14. 35 P.S. 450.105(4) (defining “fetal death” as “the expulsion or extraction from its mother of a product of conception after sixteen (16) weeks gestation, which shows no evidence of life after such expulsion or extraction.”)

15. 35 P.S. § 450.502.

16. *Id.*

17. 35 P.S. § 450.503.

18. See generally MCARE Act, 40 Pa.C.S. § 1303.504.

If/When/How Resources

The **Repro Legal Helpline** is a secure, confidential, and free resource for legal info and advice. Our website, in English, Spanish, and simplified Chinese, answers questions about self-managed abortion, young people’s abortion access, legal rights, and the law. Call [844-868-2812](tel:844-868-2812) or go to ReproLegalHelpline.org.

*Please note: If you are a local advocate working with someone experiencing a legal emergency, please contact the Helpline.

The **Repro Legal Defense Fund** provides financial assistance to people criminalized for self-managed abortion and pregnancy loss and those who help them. We assist with the high cost of criminalization including bail and legal fees: ReproLegalDefenseFund.org.

The **Judicial Bypass Wiki** is a digital hub that provides state-by-state information and resources for young people seeking abortion care. It also provides tools for trusted allies and lawyers who support young people as they navigate the maze-like judicial bypass process in states that require parental involvement: JudicialBypassWiki.IfWhenHow.org.

We provide **trainings** specifically for health care providers about self-managed abortion and the law. These trainings can serve as a “know your rights” for health care providers serving patients who are considering self-managed abortion, or seeking treatment for one. If you might be interested in this training, please reach out to our Senior Research Counsel, Lauren Paulk, at lauren@ifwhenhow.org.