

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

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 Louisiana 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 Louisiana<sup>1</sup>

**Crime: Self-managed abortion is not a crime.** Louisiana 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. Though Louisiana politicians are attempting to criminalize abortion via a provision, a ban currently blocked in court does not apply to self-managed abortion or to the pregnant person.

**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 low-income families and families of color, all health care providers in Louisiana who diagnose, examine, treat, or provide counseling are mandatory reporters for suspected child abuse and neglect.<sup>2</sup> Health care providers are also mandatory reporters for suspected vulnerable adult abuse and neglect.<sup>3</sup> 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. Under Louisiana law, pregnancy is not a trigger for an abuse investigation, however, a pregnancy of a child 12 or under is “cause to consider” abuse.<sup>4</sup> Even if a provider decides to make an abuse report, the fact that a minor or vulnerable adult self-managed their own abortion would not ordinarily need to be included in a report. Providers are not required to report domestic violence or sexual assault in Louisiana unless the victim is a minor or vulnerable adult.

**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.** Louisiana requires all health care providers to report statutory rape as child abuse.<sup>5</sup> Statutory rape includes a young person aged 16 or younger having sexual contact with anyone who is 2 or more years older.<sup>6</sup> 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.

**Certain traumas and injuries: Self-managed abortion is not a reportable injury.** Louisiana hospitals must report gunshot wounds, burn injuries, severe head trauma, spinal cord injury, and some other conditions to law enforcement.<sup>7</sup>

**Overdoses and drug use during pregnancy: If a provider knows that someone is overdosing in order to cause a miscarriage, that patient’s intention behind the overdose is not required information to include in a report.** Though Louisiana defines use of criminalized drugs during pregnancy that results in harm to a born child as “prenatal neglect[,]” this is in contemplation of the termination of parental rights, and applies only where a child is born as a result of the pregnancy.<sup>8</sup> In this context, Louisiana defines harm as when a child is born with neonatal abstinence syndrome or similar symptoms.<sup>10</sup> Only physicians are required to report prenatal drug use that results in harm.<sup>11</sup> Louisiana also mandates reporting when an overdose results in death.<sup>12</sup>

**Self-harm:** Louisiana law requires mental health care providers to report when someone is a danger to themselves or others.<sup>13</sup> Revealing an intention to self-manage an abortion is not a threat of self-harm, unless the patient reveals a physical threat to themselves. However, mental health providers may be able to mitigate this risk without reporting by employing other clinical interventions that successfully eliminate this threat.

# Major Mandatory Reporting Requirements in Louisiana

**Abortion:** It is never necessary to report a patient's intention to self-manage an abortion.<sup>14</sup> Louisiana requires abortion reporting for vital statistics purposes,<sup>15</sup> including specific requirements around reporting abortion complications,<sup>16</sup> serious adverse event reporting,<sup>17</sup> and abortion information reporting.<sup>18</sup> Generally, physicians are only required to report abortions that they themselves perform,<sup>19</sup> though all physicians must report abortion complications they treat.<sup>20</sup> The intention to self-manage — or the event of self-managing — is not information a physician is required to provide under state law.

**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.<sup>21</sup> A provider who attends a fetal death must prepare a fetal death certificate when a fetus weighs more than 350 grams or is older than 20 weeks gestational age.<sup>22</sup> Typically a provider's institution will file the certificate,<sup>23</sup> but if a fetal death occurs without medical attendance, or due to causes other than natural ones, a provider must report such death to the registrar, who will ask the coroner to investigate the death and prepare and file a certificate.<sup>24</sup> “Unclaimed stillbirths” (after 20 weeks or when a fetus weighs at least 350 grams) must be reported to the Bureau of Anatomical services, who will likely refer the case to the coroner.<sup>25</sup>

## 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, 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 Louisiana involving or potentially involving law enforcement that is not covered on this sheet, please contact [info@ifwhenhow.org](mailto:info@ifwhenhow.org).
2. La. Ch.C. Art. 603.
3. La. R.S. § 15:1504.
4. La. Ch.C. Art. 609.
5. La. Ch.C. Art. 603.
6. La. R.S. § 14-80.1, § 14-81. Sexual contact with a young person under 13 years of age is always considered assault. La. R.S. § 14-42.
7. La. R.S. § 14:403.4-5. The full list of Louisiana reportable conditions can be found here: <https://ldh.la.gov/assets/oph/Center-PHCH/Center-CH/infectious-epi/Surveillance/sanitarycode.pdf>
8. “Prenatal neglect” means exposure to chronic or severe use of alcohol or the unlawful use of any controlled dangerous substance, as defined by R.S. 40:961 et seq., or in a manner not lawfully prescribed, which results in symptoms of withdrawal in the newborn or the presence of a controlled substance or a metabolic thereof in his body, blood, urine, or meconium that is not the result of medical treatment, or observable and harmful effects in his physical appearance or functioning.” La. Ch.C. Art. 603(24).
9. Arguably, only physicians must report prenatal neglect. Though all medical providers are mandatory reporters, and prenatal neglect is technically neglect (and thus reportable by anyone), a brochure from the Louisiana Department of Health only lists physicians as reporters of prenatal neglect. LAC 67:V.1135.
10. LAC 67:V.1135. Note that there are two methods depending on whether the drugs ingested were prescribed or unlawfully obtained. Prescribed drugs require a faxed form, while unlawful drug use requires a call to the CPS Hotline. The full directive from the form is as follows: “This notification does not constitute a report of child abuse and or neglect and shall be faxed to Centralized Intake at (225) 342-7768. This notification is used to notify DCFS newborns who exhibit symptoms of withdrawal or other observable and harmful effects in his physical appearance or functioning that a physician believes is due to the use of a controlled dangerous substance, as defined by R.S. 40:961 et seq., in a lawfully prescribed manner, by the mother during pregnancy. If a newborn is exhibiting withdrawal symptoms that are believed to be the result of unlawful use of a controlled dangerous substance; or, if you suspect abuse and or neglect including suspicion of prenatal neglect, you must contact the CPS Hotline at 1-855-4LA-KIDS to make a report of suspected child abuse/neglect.”
11. LAC 67:V.1135 only applies to physicians.
12. La. R.S. § 14:403.10.
13. La. R.S. § 9:2800.2. This requires a “threat of physical violence...against a clearly identified victim...coupled with the apparent intent and ability to carry out such threat.” Id.
14. “Abortion” or “induced abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent 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. Such use, prescription, or means is not an abortion if done with the intent to: (a) Save the life or preserve the health of an unborn child. (b) Remove a dead unborn child or induce delivery of the uterine contents in case of a positive diagnosis, certified in writing in the woman's medical record along with the results of an obstetric ultrasound test, that the pregnancy has ended or is in the unavoidable and untreatable process of ending due to spontaneous miscarriage, also known in medical terminology as spontaneous abortion, missed abortion, inevitable abortion, incomplete abortion, or septic abortion. (c) Remove an ectopic pregnancy.” La. R.S. § 40:1061.9.

## Cited Resources (continued)

15. La. R.S. § 40: 1061.21(A). This section does not discuss abortion reporting requirements related to abortion clinics, such as La. R.S. § 40:2175.7.
16. La. R.S. § 40: 1061.21(B).
17. La. R.S. § 40:1061.11. This section only applies to adverse events from abortion-inducing drugs, and then only when the physician themselves prescribed or gave an abortion-inducing drug to a pregnant person.
18. La. R.S. § 40:1061.17. It is unclear under current law how physicians are required to report the dispensing of abortion information where no abortion is then performed.
19. The Louisiana code does not currently contemplate abortion reporting requirements for abortions performed by others. La. R.S. § 40: 1061.21(A).
20. La. R.S. § 40:1061.21(B).
21. The Louisiana definition of fetal death explicitly excludes abortion. "‘Spontaneous fetal death’ and ‘stillbirth’ mean the expulsion or extraction of a product of human conception resulting in other than a live birth and when the expulsion or extraction is not the result of an induced termination of pregnancy." La. R.S. § 40:32.
22. La. R.S. § 40:49(B)(2).
23. La. R.S. § 40:49(10).
24. La. R.S. § 40:47. "Natural causes" is not defined under Louisiana law.
25. LAC 48:1.705.

## 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](https://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](https://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](https://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](mailto:lauren@ifwhenhow.org).