

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

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 Ohio 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 Ohio<sup>1</sup>

**Crime: Self-managed abortion is not a crime.** Ohio 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.<sup>2</sup> Though Ohio lawmakers have criminalized the provision of most abortions after six weeks of pregnancy, this does not apply to self-managed abortion.

**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 people working in a hospital who admit, examine, or care for a minor or vulnerable adult patient must report to the local child protective services agency or the police when they have “reasonable cause to suspect”<sup>3</sup> that a minor or vulnerable adult is a victim of abuse.<sup>4</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. 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 Ohio, however, they are required to note in the patient’s record if they have reasonable cause to believe the patient is a victim of domestic violence, and the basis for that conclusion.<sup>5</sup>

**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.** Ohio requires all health care providers to report statutory rape as child abuse.<sup>6</sup> Statutory rape includes sexual activity with a minor younger than 13,<sup>7</sup> as well as sexual activities between a minor aged 13 to 15 if their partner is at least 18 years old, four or more years older than the minor, and knows or should have known the minor was under 16.<sup>8</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, 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 Ohio law as an automatic trigger for child abuse reporting.

**Certain traumas and injuries: Self-managed abortion is generally not a reportable injury.** Ohio providers must report gunshot wounds, stab wounds, certain burn wounds, and “any serious physical harm to persons that the [health care provider] knows or has reasonable cause to believe resulted from an offense of violence.”<sup>9</sup> Under this statute, Ohio providers may be required by law to report injuries that a pregnant person solicited another person to cause in order to induce a miscarriage. However, there is no explicit requirement that Ohio providers report the pregnant person’s intention behind the actions. In fact, Ohio law explicitly exempts actions taken by a pregnant person, as well as legal abortion.<sup>10</sup>

**Overdoses and drug use during pregnancy: Ohio providers are required to report overdose, but need not report a pregnant person’s intention to induce a miscarriage.**<sup>11</sup> Ohio law does not indicate that drug use during pregnancy is viewed child abuse.

**Self-harm or harm to others: Self-managed abortion is not typically a self-harm behavior.** In limited circumstances, Ohio case law requires mental health care providers to report when someone is a serious danger to others.<sup>12</sup> This requirement does not clearly exclude serious self-harm, however, mental health professionals have options other than reporting to authorities in these cases.

# Major Mandatory Reporting Requirements in Ohio

**Abortion:** It is never necessary to report a patient's intention to self-manage an abortion.<sup>13</sup> Ohio requires abortion reporting for vital statistics purposes,<sup>14</sup> including specific requirements around reporting abortion complications<sup>15</sup> and abortions performed at or after 20 weeks gestation.<sup>16</sup> Generally, physicians are only required to report abortions that they themselves perform,<sup>17</sup> though all physicians must report abortion complications they treat, including complications from a self-managed abortion.<sup>18</sup> The intention to self-manage 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. Ohio law requires fetal death reporting where a fetus is 20 weeks or more gestational duration.<sup>19</sup> Abortion, including self-managed abortion,<sup>20</sup> is not required to be reported under the fetal death statute.

## 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 Ohio involving or potentially involving law enforcement that is not covered on this sheet, please contact [info@ifwhenhow.org](mailto:info@ifwhenhow.org).
2. Though Ohio does have a felony reporting requirement (ORC Ann. § 2921.22), individuals with privilege, including all health care providers, are excluded from that requirement.
3. ORC Ann. § 2151.421.
4. Applies to a "child" under 18 or a person with a "developmental disability or physical impairment" under 21 that "has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect." ORC Ann. § 2151.421. Additionally, when a provider reasonably suspects that "an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation [they] shall immediately report such belief to the county department of job and family services." ORC Ann. 5101.63. "'Adult' means any person sixty years of age or older within this state who is handicapped by the infirmities of aging or who has a physical or mental impairment which prevents the person from providing for the person's own care or protection, and who resides in an independent living arrangement." ORC Ann. § 5101.60.
5. ORC § 2921.22(F)(1).
6. ORC Ann. § 2151.421 (indicating that child abuse includes minor crime victims under the "sexual offenses" chapter).
7. ORC Ann. § 2907.02.
8. ORC Ann. § 2907.04.
9. ORC Ann. § 2921.22. Serious physical harm is defined elsewhere in the code as follows: "(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment; (b) Any physical harm that carries a substantial risk of death; (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain." ORC Ann. § 2901.01
10. ORC Ann. § 2901.01. "Person" includes an unborn human who is viable, so this exemption is especially important where fetal harm results from a pregnant person's actions. *Id.*
11. ORC Ann. § 3701.23. Interpreted to require overdose reporting by The Network for Public Health Law, State Non-Fatal Overdose Reporting Requirements Fact Sheet 5 (Updated Dec. 2017)
12. ORC Ann. § 2305.51. Ohio code does not contemplate the fetus as a person who can be harmed in the context of the duty to warn/protect. Moreover, self-managed abortion would not constitute serious physical danger unless a patient expresses an intent to engage in deadly harm, such as drinking bleach or falling down the stairs. Even then, reporting is only one of three options mental health professionals have in this situation. In addition to the option of reporting to a law enforcement agency with jurisdiction over the threat, mental health professionals could hospitalize the client voluntarily, involuntarily, or on an emergency basis, or they could establish and undertake a treatment plan designed to eliminate the threatened risk.
13. Abortion "means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo. ORC § 2919.11.
14. ORC Ann. § 2919.202.
15. ORC Ann. § 3701.79 requires a physician to report any abortion complication they treat. RU-486 complication reporting requires "a physician [who] provides RU-486 (mifepristone) to another for the purpose of inducing an abortion" to report to the state medical board an incomplete abortion, severe bleeding, an adverse reaction, hospitalization, transfusion, or other serious event related to RU-486 ingestion. ORC Ann. § 2919.123.

## Cited Resources (continued)

16. OAC Ann. 3701-47-03.

17. The Ohio code does not currently contemplate abortion reporting requirements for abortions performed by others. ORC Ann. § 2919.202. Note that abortion procedures performed after fetal death are not required to be reported under this statute.

18. ORC Ann. § 3701.79 requires reports of all treated abortion complications. Because self-managed abortion is included in the definition of “abortion” under Ohio law, complications from self-managed abortion must be reported. However, there is no legal requirement to indicate that the abortion was self-managed. ORC Ann. § 2919.123. Providers are not required to report under ORC Ann. § 2919.123 unless they themselves distributed the pills to the patient.

19. OAC § 3705.16. “‘Fetal death’ means death prior to the complete expulsion or extraction from its mother of a product of human conception; the death is indicated by the fact that, after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles.” ORC Ann. § 3705.01. The medical certificate must be completed and signed by the physician who attended within 48 hours after the fetal death. ORC Ann. § 3705.16.

20. The definition of fetal death excludes abortion, including self-managed abortion. See *id.* If a fetal death is “unnatural”, only the coroner in the county where the death occurred may certify the death. ORC Ann. § 3705.29. Unnatural is not defined in statute.

## 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).