

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

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 Tennessee 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 Tennessee<sup>1</sup>

**Crime: Self-managed abortion is not a crime.** Tennessee health care providers are not required to report crimes other than child and/or vulnerable adult 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 low-income families and families of color, all health care providers in Tennessee are mandatory reporters for suspected child abuse and neglect.<sup>2</sup> Health care providers are also mandatory reporters for suspected vulnerable adult abuse, neglect, and exploitation.<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 Tennessee law, pregnancy is not grounds for a reasonable suspicion of abuse unless a minor is under 13,<sup>4</sup> however, a physician who makes an initial diagnosis of pregnancy for an unemancipated minor must provide the minor's parent, if present, and if the minor consents, with written information on how to report sexual abuse that may have resulted in the pregnancy.<sup>5</sup> However, 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.

**Certain traumas and injuries: Self-managed abortion is generally not a reportable injury.** Tennessee hospitals must report gunshot wounds, strangulation, stab wounds, wounds from another deadly weapon,<sup>6</sup> wounds "by other means of violence," poison, and some other conditions to law enforcement.<sup>7</sup> The statute requires providers to discuss the character and the extent of the injuries.<sup>8</sup> Even if an injury sustained during the course of a self-managed abortion is reportable, health care providers are not required to report the intention behind the injury.

**Overdoses and drug use during pregnancy: If a provider knows that someone is overdosing in order to cause a miscarriage, the patient's intention behind the overdose is not required information to include in a report.** Though Tennessee defines use of criminalized drugs during pregnancy that results in harm to a born child as child abuse, this is in contemplation of the termination of parental rights, and applies only where a child is born as a result of the pregnancy. Because the use of criminalized drugs during pregnancy that ends in an abortion does not implicate parental rights over the affected fetus, use of criminalized drugs during pregnancy that ends in abortion is not reportable as child abuse.<sup>9</sup> Tennessee health care providers must also report overdoses.<sup>10</sup> However, like with other injuries, if someone presents with a self-managed abortion-related overdose, regardless of what the health care provider decides to report, it is likely not necessary to report that the intent behind the overdose was to end a pregnancy.

**Self-harm: Mental health care providers generally do not need to report self-managed abortion.** Tennessee law requires qualified mental health care providers and behavioral analysts to report when someone is an imminent danger to themselves or others.<sup>11</sup> This requires an "actual threat of serious bodily harm or death against a reasonably identifiable victim or victims."<sup>12</sup> Revealing an intention to self-manage an abortion is not a threat of serious bodily harm, unless the patient reveals that they intend to self-manage by means of 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 Tennessee

**Abortion:**<sup>13</sup> It is never necessary to report a patient's intention to self-manage an abortion. A physician is not required to report an intention to self-manage — or the event of self-managing — under state law. In Tennessee, physicians who perform an abortion are required to report that abortion to the Commissioner of Health.<sup>14</sup> A separate abortion report is required where an abortion is performed due to medical necessity.<sup>15</sup> An abortion report is only necessary where the patient presents with a continuing pregnancy. Medically attending to an incomplete abortion or miscarriage where fetal demise has occurred does not require an abortion report.<sup>16</sup> An abortion provider is not clearly required to report actions taken by the patient to induce an abortion prior to the patient visiting the provider on an abortion reporting form.

**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>17</sup> Tennessee health care providers or institutions must report any fetal death that occurs after twenty (20) weeks gestational age or where the fetus weighs 350 grams or more to the Office of Vital Records within ten (10) days.<sup>18</sup> When a fetal death occurs in an institution, it is the institution's responsibility to report the death. If a fetal death occurs outside an institution but with the attendance of a physician, the physician must report the fetal death.<sup>19</sup> If a reportable fetal death occurs without medical attendance, a medical examiner must investigate the cause and report the death accordingly.<sup>21</sup>

**Miscarriages:** Health care providers need not report miscarriages. However, they may need to report a resulting fetal death that qualifies under the fetal death statute discussed above.

**Emergency Medical Care:** EMTs generally do not need to report self-managed abortion. Tennessee requires EMTs to fill out a report for each patient given emergency medical care, including transporting someone to a hospital or between facilities.<sup>22</sup> A description of the illness or injuries in the case of a self-managed abortion should include any clinically significant events.

## 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 Tennessee involving or potentially involving law enforcement that is not covered on this sheet, please contact [info@ifwhenhow.org](mailto:info@ifwhenhow.org).
2. Tenn. Code Ann. § 37-1-403. Child abuse is defined as, “when a person under the age of eighteen (18) is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker...”Tenn. Code Ann. § 37-1-102.
3. Tenn. Code Ann. § 71-6-103.
4. Tenn. Code Ann. § 39-15-210. Treating or diagnosing a minor under 13 for an STD also requires a report. Tenn. Code Ann. § 37-1-403.
5. Tenn. Code Ann. § 38-7-103.
6. A deadly weapon is inclusive of anything that is intended to cause deadly harm, or that “is capable of causing death or serious bodily injury[.]” “Serious bodily injury” includes the following:
  - (A) A substantial risk of death;
  - (B) Protracted unconsciousness;
  - (C) Extreme physical pain;
  - (D) Protracted or obvious disfigurement;
  - (E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty; or
  - (F) A broken bone of a child who is twelve (12) years of age or less[.]...
  - (6) “Deadly weapon” means:
    - (A) A firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury; or
    - (B) Anything that in the manner of its use or intended use is capable of causing death or serious bodily injury...Tenn. Code Ann. § 39-11-106.
7. Id. Providers also have to report meth-related injuries, as well as female genital mutilation. Tenn. Code Ann. § 38-1-101.

## Cited Resources (continued)

8. Tenn. Code Ann. § 38-1-101(a)(1).
9. In re Kolton C., No. E2019-00736-COA-R3-PT, 2019 Tenn. App. LEXIS 572, at \*9 (Ct. App. Nov. 26, 2019). Additionally, health care providers should be aware that if they work at a hospital, their institution is required to report adverse drug reactions Tenn. Comp. R. & Regs. R. 1200-08-01-.06. This may include any adverse reactions to mifeprax, misoprostol, or other drugs administered to cause an abortion.
10. Tenn. Code Ann. § 68-11-314 (gives Tennessee Department of Health the authority to develop data reporting on drug overdoses). There is also a separate reporting statute for overdoses by a student – health care professionals must report a diagnosis or treatment of overdose to any person believed to be enrolled in a K-12 school to “the appropriate public school superintendent.” Tenn. Comp. R. & Regs. R. 0940-6-3-.02. Note that the name of the student must be omitted.
11. Tenn. Code Ann. § 33-3-210.
12. Id.
13. “Abortion” means the administration to any woman pregnant with child, whether the child be quick or not, of any medicine, drug, or substance whatever, or the use or employment of any instrument, or other means whatever, with the intent to destroy the child, thereby destroying the child before the child’s birth.”  
Tenn. Code Ann. § 39-15-201.  
“Abortion” means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant with intent other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus  
Tenn. Code Ann. § 39-15-211.
14. Tenn. Code Ann. § 39-15-203.
15. Id.; Tenn. Dep’t of Health, Certificate of Medical Necessity for Abortion (Revised Apr. 24, 2015), <https://www.tn.gov/content/dam/tn/tenncare/documents/certofmednecforabortion.pdf>; see also Tenn. Code Ann. § 39-15-202 (detailing informed consent requirements, and noting that they may only be dispensed with in the case of a medical emergency; defining medical emergency; requiring physicians to record the basis of the medical emergency in the patient’s chart). This includes abortion sought as a result of rape or incest where that rape or incest has been credibly reported to a law enforcement or counseling agency, as well as abortion that is necessary to avert a life-endangering physical condition. In either case, providers are asked to attach supplemental documentation to support their decision. Though the form itself is not required by statute, medical documentation of the physician’s reasons for the medical emergency in the patient’s chart is required. Tenn. Code Ann. § 39-15-202.
16. Tennessee requires providers to report each abortion where the patient presents with a continuing pregnancy, as well as the method of termination the provider uses if that method is surgical, the disposition of fetal tissue method if surgical, and the performance of an ultrasound/heartbeat detection. Id.
17. In Tennessee, “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.” Tenn. Code Ann. § 68-3-102. Abortion is defined separately in the same section of the code.
18. Tenn. Code Ann. § 68-3-504.
19. Id.
20. Tenn. Code Ann. § 68-3-504.
21. Id. Tennessee health care providers are also required to report deaths under unusual, suspicious, or unnatural circumstances. Because other sections of the code clearly include fetal deaths where intended, fetal deaths are unlikely to be included in this requirement. Tenn. Code Ann. § 38-7-108.
22. Tenn. Comp. R. & Regs. R. 1200-12-01-.15. If filling out a report is impossible, a verbal report to the ER at the time of arrival will suffice. The report should include the patient’s name, age, and gender if known; the location from which the patient was transported if applicable; the approximate times of the incident, the transport, and the arrival at the hospital; the patient’s chief complaint or a description of the illness or injuries, including vital signs; and the care and treatment provided at the scene and/or during the transport. The report must be submitted immediately or within 24 hours.

## 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).

# If/When/How Resources

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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).