

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

Note: Laws around abortion are changing rapidly. This fact sheet is up-to-date as of August 16, 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 Hawai'i 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 Hawai'i<sup>1</sup>

**Crime: Self-managed abortion is not a crime.** Hawai'i health care providers are not required to report crimes other than child<sup>2</sup> or vulnerable adult abuse.<sup>3</sup>

**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 reporting are fraught with bias, in particular toward low-income families and families of color, all health care providers in Hawai'i are mandatory reporters for suspected child abuse.<sup>4</sup> Health care providers are also mandatory reporters for suspected vulnerable adult abuse, neglect, and exploitation.<sup>5</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 Hawai'i law, pregnancy is generally not grounds for reasonable suspicion of child abuse. 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. Child abuse is only reportable when the alleged perpetrator is related to the child, residing with the child, or is otherwise responsible for the child's care.<sup>6</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.** Hawai'i requires all health care providers to report statutory rape as child abuse. Statutory rape includes any sexual activities with a young person aged 13 or younger, sexual activity with a young person aged 14 or 15 when their partner is more than five years older and is not their spouse, and sexual activities with a young person aged 16 or 17 when their partner is more than five years older and is acting in a professional capacity to instruct, advise or supervise the minor.<sup>7</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 not clinically significant to care provision.

**Certain traumas and injuries: Self-managed abortion is rarely a reportable injury.** Hawai'i physicians, physician assistants, and surgeons who attend or treat a wound caused by a knife or bullet must report that injury to the chief of police for the county.<sup>8</sup> They must also report injuries caused by violence "or sustained in a suspicious or unusual manner" when those injuries "would seriously maim, produce death, or render[] the injured person unconscious."<sup>9</sup> Because abortion is not suspicious or unusual, injuries sustained during self-managed abortion are not reportable unless caused by the violence of another person, and then only when the violence was severe enough to "seriously maim."<sup>10</sup> Even if an injury related to a self-managed abortion is reportable, there is no reason to indicate the patient's intention to self-manage an abortion, and doing so may be a violation of medical privacy.

**Overdoses and drug use during pregnancy: Hawai'i does not require overdose or drug use reporting.** Hawai'i law does not indicate that drug or alcohol use during pregnancy is viewed as child abuse. Therefore, under Hawai'i law, medical providers are not required to report drug or alcohol use during pregnancy, and doing so is likely to harm the patient and their family.<sup>11</sup>

# Major Mandatory Reporting Requirements in Hawai'i

**Self-harm: Hawai'i generally does not require reports of self-harm**, though providers may be required to report some self-harm under the injury reporting requirements. Note that indicating an intention to use abortion pills, which have an excellent medical safety record, would not qualify under the law as a plan to self-harm. For patients who are suicidal or at risk of self-harm because of their pregnancy, providers may be able to address the risk by ensuring that the patient has the appropriate resources to discontinue the pregnancy.

**Abortion: The law in Hawai'i on abortion reporting is unclear, but appears to require abortion reporting regardless of gestational age or type of procedure.** No further guidance is provided.

**Fetal death: Hawai'i law on fetal death reporting remains unclear, but self-managed abortions are not clearly reportable as fetal deaths.** Vital statistics regulations that are currently under revision state that only stillbirths (deaths after 20 weeks of pregnancy)<sup>12</sup> are reportable as fetal deaths,<sup>13</sup> and the definition of a fetal death does not contemplate the inclusion of abortion, self-managed or otherwise.<sup>14</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 Hawai'i involving or potentially involving law enforcement that is not covered on this sheet, please contact [info@ifwhenhow.org](mailto:info@ifwhenhow.org).
2. HRS § 350-1.1
3. HRS § 346-224.
4. Id. § 350-1.1 Any health care provider providing care to a minor that has "reason to believe" that child abuse has occurred or that there is a substantial risk of its occurrence "in the reasonably foreseeable future" must immediately make an oral report to the Hawai'i Department of Human Services or to law enforcement. Failure to report when required is a misdemeanor. Id. § 350-1.2.
5. HRS § 346-224. "'Abuse' means any of the following, separately or in combination:  
(1) Physical abuse;  
(2) Psychological abuse;  
(3) Sexual abuse;  
(4) Financial exploitation;  
(5) Caregiver neglect; or  
(6) Self-neglect;  
each as further defined in this chapter. Abuse does not include, and a determination of abuse shall not be based solely on, physical, psychological, or financial conditions that result when a vulnerable adult seeks, or when a caregiver provides or permits to be provided, treatment with the express consent of the vulnerable adult or in accordance with the vulnerable adult's religious or spiritual practices." HRS § 346-222 [1] "'Vulnerable adult' means a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to:  
(1) Communicate or make responsible decisions to manage the person's own care or resources;  
(2) Carry out or arrange for essential activities of daily living; or  
(3) Protect oneself from abuse, as defined in this part." HRS § 346-222.
6. Id. § 350-1.
7. HRS § 707-731.
8. HRS. § 453-14.
9. Id.
10. Id.
11. See, e.g., Imani Worthy, Tracy Serdjenian, and Jeanette Vega Brown, Trapped in the Web of Family Policing: The Harms of Mandated Reporting and the Need for Parent-Led Approaches to Safe, Thriving Families (39-49), FIJ QUARTERLY, Spring 2022. See generally DOROTHY E. ROBERTS, TORN APART (2022).
12. The CDC defines stillbirth as "the death or loss of a baby before or during delivery...at or after 20 weeks of pregnancy." Centers for Disease Control and Prevention, Stillbirth, <https://www.cdc.gov/ncbddd/stillbirth/facts.html#:~:text=A%20stillbirth%20is%20the%20death,to%20when%20the%20loss%20occurs> (last visited Dec. 11, 2020).

## Cited Resources (continued)

13. Haw. Code. R. § 11-117(7) (1961).

14. Id. Hawai'i law requires the person in charge of disposition of a body to notify a local agent of the Department of Health immediately when a fetal death occurred without medical attendance so that the local health agent can certify the cause of death prior to disposition. HRS § 338-9. If the circumstances "suggest that the death or fetal death was caused by other than natural causes" the local health agent is required to refer the case to the coroner for investigation and certification. HRS § 338-9 Natural causes" is not defined in Hawai'i law. In Black's Law Dictionary, a "natural death" is defined as death due to "any cause other than accident or homicide." Black's Law Dictionary (2d Edition), natural causes, <https://thelawdictionary.org/natural-death/> (last visited Dec. 11, 2020).

## 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 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 submit a request via this form: [tinyurl.com/SMATechAssistance](https://tinyurl.com/SMATechAssistance).