

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

Note: Laws around abortion are changing rapidly. This fact sheet is up-to-date as of January 23, 2023.

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 Kentucky 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 Kentucky¹

Crime: Self-managed abortion is not a crime. Kentucky health care providers are not required to report crimes other than child or vulnerable adult abuse, as described elsewhere in this fact sheet. Currently, performing an abortion in Kentucky at any stage of pregnancy is a crime, but a pregnant person is explicitly exempted from criminal conviction and penalty under the law.² This may not deter Kentucky officials from seeking to criminalize self-managed abortion on other grounds even though it is not an explicit crime.

Child and vulnerable adult abuse: A minor or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse. Though reporting requirements for child and vulnerable adult abuse are fraught with bias, in particular toward low-income families and families of color, all health care providers in Kentucky are required to report suspected abuse and neglect of both children³ and vulnerable adults.⁴ 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. Reproductive coercion of a minor will likely qualify as reasonable suspicion of abuse and would therefore be reportable under Kentucky law. Pregnancy itself is not generally a trigger for abuse reporting, but Kentucky requires a child abuse report where an infant is born with “substance abuse withdrawal symptoms resulting from prenatal drug exposure or fetal alcohol spectrum disorder.”⁵ However, this requirement is not implicated where a person has ended or is seeking to end a pregnancy. 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.

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. Kentucky requires all health care providers to report statutory rape as child abuse.⁶ Statutory rape includes a young person aged 15 or younger having sexual contact with an adult who is 21 or older.⁷ In general, unless providers know the age of the minor’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 not a reportable injury. Kentucky health care providers are not required to report injuries to law enforcement unless such injuries constitute child or vulnerable adult abuse as described elsewhere in this fact sheet. Under Kentucky law, if a health care provider suspects that a patient has experienced domestic or dating violence or abuse, the provider must provide the patient with certain educational materials,⁸ and is required to report the domestic violence to law enforcement upon the patient’s request.⁹

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. Although Kentucky mandates reporting of known overdoses¹⁰ and requires a child abuse report where an infant is born with withdrawal symptoms (as described elsewhere in this fact sheet), the use of criminalized drugs or alcohol during a pregnancy that ends in abortion is not reportable. Therefore, under Kentucky law, medical providers are not required to report drug or alcohol use during a pregnancy unless indicated as overdose or where an infant is born with withdrawal symptoms. Needlessly reporting drug or alcohol use during pregnancy is likely to harm the patient and their family.¹¹

Major Mandatory Reporting Requirements in Kentucky

Self-harm: Kentucky law requires mental health care providers and behavioral analysts to report when someone is an imminent danger to themselves or others.¹² Revealing an intention to self-manage an abortion is not a threat of serious bodily harm unless the patient reveals they intend to self-manage through a physical threat to themselves. Even in such circumstances, mental health providers may attempt other clinical interventions prior to reporting. However, mental health providers may be able to mitigate this risk without reporting by employing other clinical interventions that successfully eliminate this threat.

Abortion: It is never necessary to report a patient's intention to self-manage an abortion to law enforcement, but providers are required to report all abortions they perform or complications they treat for vital statistics purposes. Kentucky requires abortion reporting for vital statistics purposes,¹⁴ including specific requirements around reporting abortion complications,¹⁵ emergency abortion reporting,¹⁶ abortion information reporting and type of procedure performed,¹⁷ and when treating minor patients.¹⁸ Generally, physicians are only required to report abortions that they themselves perform,¹⁹ but a recent law requires a report of every abortion treated in a medical institution.²⁰ The law is new and untested, but language as well as context suggests that it is intended to regulate providers whose patients have complications from abortion. It is unlikely the law intends to track patients who undertake an action that prompts a miscarriage, including taking abortion pills.²¹ Kentucky also requires health care providers to separately report each time a prescription is issued for certain medications prescribed to induce abortion,²² but patient identifying information should not be included in the report. Health care providers are likely not required to report actions taken by the patient to induce an abortion prior to the patient visiting the provider.²³

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.²⁴ Kentucky health care providers and institutions must report any fetal death that occurs after 20 weeks' gestational age or where the fetus weighs 350 grams or more.²⁵ Additional reporting rules apply for midwives.²⁶ Health care providers are not required to report miscarriages unless the miscarriage qualifies as a fetal death.

Note: In 2022, Kentucky passed a “trigger ban” – a total ban on abortion that went into effect after *Roe v. Wade* was overturned. Kentucky's trigger ban, H.B. 148, which took effect following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, criminalizes abortion in most circumstances, however it specifically states that “[n]othing in this section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty.” The ACLU filed a lawsuit on June 27, 2022, and a judge granted the ACLU's request for a restraining order against the law on June 30, 2022, but the order has since been lifted on certain provisions. H.B.3 does not criminalize self-managed abortion for the pregnant person, but it does change reporting requirements for providers. Kentucky providers should consult with an in-state attorney for details of compliance with the law.

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 Kentucky involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
2. H.B. 148, which took effect following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, criminalizes abortion in most circumstances. However, it specifically states that "[n]othing in this section may be construed to subject the pregnant mother upon whom any abortion is performed or attempted to any criminal conviction and penalty."
3. Ky. Rev. Stat. Ann. § 620.030.
4. Ky. Rev. Stat. Ann. § 209.030.
5. Ky. Rev. Stat. Ann. § 214.160.
6. Ky. Rev. Stat. Ann. § 600.020; Ky. Rev. Stat. Ann. § 620.030.
7. Ky. Rev. Stat. Ann. § 600.020.
8. Such materials include information about how to access regional domestic violence or rape crisis centers, as well as information about how to pursue a protective order. Ky. Rev. Stat. Ann. § 209A.130. Failure to provide such materials is a misdemeanor. Ky. Rev. Stat. Ann. § 209A.030.
9. Ky. Rev. Stat. Ann. § 209A.130.
10. Ky. Rev. Stat. Ann. § 218A.202. Specifically, emergency room providers that perform a toxicology screen on patients with suspected overdose must report any positive results. The intent behind the use of any controlled substance is irrelevant to the report.
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. Ky. Rev. Stat. Ann. § 202A.400.
13. "'Abortion' means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth. 'Abortion' excludes management of prolonged retention of product of conception following fetal death[.]" Ky. Rev. Stat. Ann. § 213.011.
14. Ky. Rev. Stat. Ann. § 213.101.
15. Ky. Rev. Stat. Ann. § 311.774. See also H.B. 3, an anti-abortion law that was enacted in April 2022, which is currently subject to a partial injunction pending the outcome of litigation. H.B. 3 imposes the following reporting requirement: "(1) A hospital, healthcare facility, or individual physician shall file a written report with the cabinet regarding each patient who comes under the hospital's, healthcare facility's, or physician's care and reports any complication or adverse event as defined under Section 5 of this Act, requires medical treatment, or suffers a death that the attending physician, hospital staff, or facility staff has reason to believe is a primary or secondary result of an abortion. The reports shall be completed by the hospital, healthcare facility, or attending physician who treated the patient, signed by the attending physician, and transmitted to the cabinet within thirty (30) days of the discharge or death of the patient treated for the complication or adverse event." (emphasis added). This part of H.B. 3 is currently in effect.
16. Ky. Rev. Stat. Ann. § 213.101.
17. Id. If the pregnancy was 20 or more weeks, the physician must certify in writing why they chose the specific type of procedure used to terminate the pregnancy.
18. Ky. Rev. Stat. Ann. § 311.732.
19. Ky. Rev. Stat. Ann. § 213.101. If the abortion occurs in an institution, the person in charge of the institution must report within 15 days after the end of the month in which the abortion occurred. If the abortion was performed outside of an institution, the physician attending the abortion must prepare and file the report within 15 days after the end of the month in which the abortion was performed.
20. H.B. 3 amended Ky. Rev. Stat. Ann. § 213.101 to read as follows: "Each abortion as defined in KRS 213.011 which occurs in the Commonwealth, regardless of the length of gestation, shall be reported to the Vital Statistics Branch by the person in charge of the institution within three (3) days after the end of the month in which the abortion occurred. If the abortion was performed outside an institution, the attending physician shall prepare and file the report within three (3) days after the end of the month in which the abortion occurred."
21. In general, this statutory scheme is about regulating the actions of health care providers, and requiring reporting of actions the healthcare providers themselves take regarding abortion. The statutory scheme itself bans abortion with minimal exceptions, and this suggests the state wishes to track emergency abortions and treatment of abortion complications, not the fact of self-managed abortion (which is private rather than institutional behavior).
22. Ky. Rev. Stat. Ann. § 213.101. Id. Includes prescriptions issued for RU-486, cytotec, pitocin, mifeprex, misoprostol, "or any other drug or combination of drugs for which the primary indication is the induction of abortion." Ky. Rev. Stat. Ann. § 311.7731.
23. Ky. Rev. Stat. Ann. § 213.101. Id.
24. The Kentucky definition of fetal death explicitly excludes abortion. "'Fetal death' means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy; the death is indicated by the fact that after such 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 definitive movement of the voluntary muscles. This definition shall exclude abortion...." Ky. Rev. Stat. Ann. § 213.011.
25. Ky. Rev. Stat. Ann. § 213.096. Providers and coroners should report fetal deaths on a provisional report of death, which the Kentucky vital statistics office then turns into a stillbirth certificate. While the statute specifies that a fetal death must be reported on a combination birth-death or stillbirth certificate, the Kentucky Registrar Guidelines have provided that a provisional report can be used (Kentucky Registrar Guidelines (Rev. 2/2019), pp. 15, 18, 21, 43. ("A Provisional shall be completed for all stillbirths.", p. 43)). Hospital-based providers should report stillbirths in the KY-CHILD system.
26. Midwives are required to submit an annual report to the Board of Nursing indicating the number of cases of fetal demise and newborn deaths, as well as a report within 30 days for each maternal and newborn death (excluding fetal demise). These reports only apply to midwifery clients who intend to have an out-of-hospital birth. 201 KAR 20:660; 2020 KY Regulation Text 23670 (Adopted Sept. 8, 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](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 submit a request via this form: tinyurl.com/SMATechAssistance.