

Mandatory Reporting Requirements, Law Enforcement, and Patient Confidentiality in West Virginia

Note: This resource is up to date as of August 2025.

Why use this fact sheet?

Confidentiality is central to the provider-patient relationship and a core part of medical ethics. In addition, violating patient confidentiality unnecessarily may carry professional or legal penalties. This fact sheet provides an overview of some of the major mandatory reporting requirements and where they intersect with patient privacy – with a specific focus on self-managed abortion. This factsheet does not include reporting requirements that are specific to long-term care facilities. 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.

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. We also 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 may 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, racially biased system and frequently violate people’s rights. Failure to report when it is necessary also carries 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.

Providers can also help protect their patients from unjust criminalization.

Know your mandatory reporting obligations, and where they intersect with patient privacy.

This fact sheet covers most mandatory reporting requirements in West Virginia law. 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 if not legally required
- Not asking patients for information that is not necessary to patient care
- Informing patients of what the provider may have to report prior to taking patient history or 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 West Virginia¹

Crime: Self-managed abortion is not a crime for abortion seekers in West Virginia.²

West Virginia health care providers are not required to report crimes other than: (1) abuse or neglect of a child (including sexual abuse, statutory rape, or an infant that tested positive for illegal substances);³ (2) vulnerable adult abuse or neglect;⁴ and (3) certain injuries or conditions (e.g., gunshot wounds, knife wounds, or other sharp instrument injuries).⁵

Child⁶ or vulnerable adult⁷ abuse: A child or vulnerable adult self-managing an abortion is not ordinarily reportable as abuse.

Legal requirements for child abuse reporting are fraught with bias, in particular toward families of color and families struggling to make ends meet. However, all health care providers in West Virginia who diagnose, examine, treat, or provide counseling are mandatory reporters for suspected child abuse and neglect.⁸ Health care providers are also mandatory reporters for suspected vulnerable adult and facility resident abuse or neglect.⁹ Because suspicion is subjective and can often stem from bias, health care providers should thoroughly examine any potential bias at play when deciding whether or not a report is required under the law. Under West Virginia law, sexual abuse or suspected sexual abuse of a person under 18 must be reported as child abuse.¹⁰

**Have more
questions?
Reach out to
request
technical
assistance.**

Health care providers should inform adolescent patients about what constitutes reportable child abuse prior to talking to them about care where possible. Even if a provider decides to make an abuse report, the fact that a minor 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.

West Virginia requires all health care providers to report suspected child abuse, which includes statutory rape.¹¹ Under West Virginia law, statutory rape includes sexual contact between someone who is 14 or older and another person who is younger than 12 years old.¹² This section of the law does not have exceptions. The term also encompasses sexual contact when a minor is unable to consent under West Virginia law because they are younger than 16, but this section of the law does have exceptions. It is not reportable statutory rape if both people are minors under 16, or if the older person is less than 4 years older than the minor.¹³ 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. Health care providers should inform adolescent patients about what constitutes reportable sexual conduct prior to talking to them about care where possible.

Certain reportable injuries: Self-managed abortion is not a reportable injury.

Providers in West Virginia must report wounds from firearms, knives, or other sharp instruments and other injuries that may have resulted from criminal conduct.¹⁴ A self-managed abortion is not criminal conduct, and would not qualify as reportable under this statute. Health care providers should inform patients about what constitutes reportable injuries prior to talking to them about care where possible. Additionally, providers should note that allowing law enforcement into a patient's room is often a patient privacy violation.¹⁵

¹⁶ **Overdoses and drug use during pregnancy: West Virginia requires a report following overdoses and instances where an infant is born with illegal drugs in its system.¹⁷**

Providers, emergency responders, and medical examiners must report overdoses within 24 hours after responding to the incident.¹⁸ However, mandated reporters are not required to report the intent behind an overdose and do not need to indicate if an overdose was related to a self-managed abortion.

Additionally, if an infant is born with illegal drugs in its system, West Virginia courts have held that this constitutes reportable child abuse or neglect.¹⁹²⁰ However, a prior West Virginia court held that an abuse and neglect proceeding cannot be initiated to protect the fetus prior to birth. Laws concerning drug use during pregnancy do not contemplate pregnancies that end in abortion - their purpose is to consider potential harm to a born child. Therefore a self-managed abortion that does not result in a live birth would not need to be reported.²¹

Abortion: It is never necessary to report a patient's intention to self-manage an abortion.

West Virginia requires the person in charge of the hospital to report abortions performed at the facility.²² Abortions that occur outside a hospital, including self-managed abortions, are not captured by the hospital-based reporting requirement. When a report is required, the hospital does not need to provide any personally identifying information about the patient and is not required to indicate the reason for the abortion, and therefore would not need to disclose if the abortion was related to an attempted self-managed abortion.²³

Fetal death: Providers do not have to report abortions as fetal deaths.

The statutory definition of "fetal death" explicitly excludes an "induced termination of pregnancy."²⁴ Fetal death reports are required when a fetus weighs at least 350 grams, or, if the weight is unknown, is at least 20 weeks LMP. The person in charge of the institution making the report or his or her designated representative must prepare and file the report within five days of the delivery.²⁵

HIPAA:

HIPAA generally prevents health care providers and entities from disclosing patient information without patient consent, and the state reporting laws discussed in this fact sheet are exceptions to that rule.²⁸ This means that when a provider is legally required to make a report, HIPAA allows them to share patient information that is specifically required or permitted by the applicable state reporting law. Providing any additional patient information beyond what is specifically required or permitted by state law would likely violate HIPAA.

Accordingly, providers should carefully consider what patient information is necessary for making a report. For example, if a provider treats a minor patient for an injury that gives them cause to suspect physical abuse, the provider could share the records that are relevant to the suspected abuse, but they likely could not share the patient's *entire* medical record without violating HIPAA.

Providers with questions about medical privacy laws in relation to reproductive health care can request technical assistance from If/When/How: <https://ifwhenhow.org/learn/technical-assistance/>.

Citations

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 West Virginia involving or potentially involving law enforcement that is not covered on this sheet, please contact info@ifwhenhow.org.
2. W. Va. Code § 61-2-8 criminalizes the provision of abortions that are not permitted under West Virginia abortion law. This law exempts "any pregnant female upon whom an abortion is performed or induced or attempted to be performed or induced" from any criminal penalties under the statute.
3. W. Va. Code § 49-2-803(a).
4. W. Va. Code § 9-6-9(a).
5. W. Va. Code § 61-2-27(a).

Citations

6. For purposes of the West Virginia child abuse laws, a "child" means any person under the age of 18 and not otherwise emancipated. W. Va. Code § 61-8D-1(2).
7. "Vulnerable adult" is defined as "any person over the age of 18, or an emancipated minor, who by reason of physical or mental condition is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health and protection." W. Va. Code § 9-6-1(5).
8. W. Va. Code § 49-2-803(a).
9. W. Va. Code § 9-6-9.
10. W. Va. Code § 49-2-803(a).
11. W. Va. Code § 49-2-803(a); W. Va. Code § 49-1-201; W. Va. Code § 61-8B-9; W. Va. Code § 61-8B-7.
12. W. Va. Code § 61-8B-7(a).
13. W. Va. Code § 61-8B-9(a)-(b).
14. W. Va. Code § 61-2-27(a). Under this statute a medical provider must report "a wound caused by a gunshot or a knife or other sharp or pointed instrument, under circumstances which would lead a reasonable person to believe resulted from a violation of the criminal laws of this state" to the appropriate law enforcement agency in the county where the wound is treated.
15. Working Group on Policing and Patient Rights, *Police in the Emergency Department: A Medical Provider Toolkit for Protecting Patient Privacy* (2021), <https://www.law.georgetown.edu/health-justice-alliance/wp-content/uploads/sites/16/2021/05/Police-in-the-ED-Medical-Provider-Toolkit.pdf> (last visited Oct. 28, 2025).
16. An "overdose" means "an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death believed to be caused by abuse and misuse of prescription or illicit drugs or by substances that a layperson would reasonably believe to be a drug." W. Va. Code § 16-5T-4(e).
17. W. Va. Code § 16-5T-4(b); *In re A.L.C.M.*, 239 W. Va. 382, 384-85 (W. Va. 2017) (holding that "when a child is born alive, the presence of illegal drugs in the child's system at birth constitutes sufficient evidence that the child is an abused and/or neglected child, as those terms are defined by W. Va. Code § 49-1-201 (2015) (Repl. Vol. 2015), to support the filing of an abuse and neglect petition pursuant to W. Va. Code § 49-4-601").
18. W. Va. Code § 16-5T-4.

Citations

19. Note that the term “illegal drugs” generally does not apply to the legal use of prescribed medications taken as prescribed. West Virginia generally allows for the use of medical marijuana. W.Va. Code § 16A-3-2. *In re A.L.C.M.*, 239 W. Va. at 384-85 held that testing positive for an illegal drug at birth constitutes reportable child abuse or neglect. Though the court did not comment specifically on medical marijuana, because medical marijuana is not an illegal substance for someone with a prescription, the law likely does not contemplate the use of medical marijuana as prescribed during pregnancy as child abuse.
20. *In re A.L.C.M.*, 239 W. Va. at 384-85.
21. *State v. Louk*, 237 W. Va. 200, 786 S.E.2d 219 (2016).
22. West Virginia defines an abortion as “the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a patient known to be pregnant and with intent to cause the death and expulsion or removal of an embryo or a fetus.” W. Va. Code § 16-2R-2. The term does not include an “intrauterine fetal demise,” “stillbirth,” or “miscarriage.”
23. W. Va. Code § 16-2R-6; § 16-5-22.
24. W. Va. Code § 16-5-22(a).
25. A “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 and which is not an induced termination of pregnancy, such death being 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 definite movement of voluntary muscles.” W. Va. Code § 16-5-1(7).
26. W. Va. Code § 16-5-1(10); § 16-5-21.
27. W. Va. Code § 16-5-21(a)(1)-(2); W. Va. Code § 16-5-21(a).
28. *See, e.g.*, Dep’t of Health & Hum. Servs., *My state law authorizes health care providers to report suspected child abuse to the state department of health and social services. Does the HIPAA Privacy Rule preempt this state law?* (last reviewed Dec. 28, 2022), <https://perma.cc/4BUP-ZZDA> “[I]f a provision of State law provided for [reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention] and was contrary to the [HIPAA] Privacy Rule, the State law would prevail.” Id. In other words, HIPAA protects all patient information from disclosure, except for what a state reporting law either requires or permits.