



Current Through
May 2009

Parental Drug Use as Child Abuse

Abuse of drugs or alcohol by parents and other caregivers can have negative effects on the health, safety, and well-being of children. Approximately 47 States, the District of Columbia, Guam, and the U.S. Virgin Islands have laws within their child protection statutes that address the issue of substance abuse by parents.¹ Two areas of concern are the harm caused by prenatal drug exposure and the harm caused to children of any age by exposure to illegal drug activity in their homes or environment.

¹ The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current through May 2009. The statutes in American Samoa, Connecticut, New Jersey, Northern Mariana Islands, Puerto Rico, and Vermont do not currently address the issue of children exposed to illegal drug activity.

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Prenatal Drug Exposure

The Child Abuse Prevention and Treatment Act (CAPTA) requires States to have policies and procedures in place to notify child protective services (CPS) agencies of substance-exposed newborns (SENs) and to establish a plan of safe care for newborns identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.² Several States currently address this requirement in their statutes. Approximately 16 States and the District of Columbia have specific reporting procedures for infants who show evidence at birth of having been exposed to drugs, alcohol, or other controlled substances; 12 States and the District of Columbia include this type of exposure in their definitions of child abuse or neglect.³

Some States specify in their statutes the response the CPS agency must make to reports of SENs. Hawaii and Maine require the State agency to develop a plan of safe care for the infant. California, Maryland, Minnesota, Missouri, Nevada, and the District of Columbia require the agency to complete an assessment of needs for the infant and for the infant's family and make a referral to appropriate services. Illinois and Minnesota require mandated reporters to report when they suspect that pregnant women are substance abusers so that the women can be referred for treatment.

Children Exposed to Illegal Drug Activity

There is increasing concern about the negative effects on children when parents or other members of their households abuse alcohol or drugs or engage in other illegal drug-related activity, such as the manufacture of methamphetamines in home-based laboratories. Many States have responded to this problem by expanding the civil definition of child abuse or neglect to include this concern. Specific circumstances that are considered child abuse or neglect in some States include:

² 42 U.S.C. 5101 et seq., as amended by the Keeping Children and Families Safe Act of 2003 (P.L. 108-36). For more information on these issues, as well as training resources and technical assistance, visit the website of the National Center on Substance Abuse and Child Welfare at www.ncsacw.samhsa.gov.

³ Arizona, California, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, Oklahoma, Texas, and Utah have enacted specific reporting procedures for drug-exposed infants. Arkansas, Colorado, Florida, Illinois, Indiana, Minnesota, North Dakota, South Carolina, South Dakota, Texas, Virginia, and Wisconsin include exposure of infants to drugs in their definitions of child abuse or neglect.

- Manufacturing a controlled substance in the presence of a child or on premises occupied by a child⁴
- Exposing a child to, or allowing a child to be present where, chemicals or equipment for the manufacture of controlled substances are used or stored⁵
- Selling, distributing, or giving drugs or alcohol to a child⁶
- Using a controlled substance that impairs the caregiver's ability to adequately care for the child⁷
- Exposing a child to the criminal sale or distribution of drugs⁸

Approximately 25 States and the U.S. Virgin Islands address in their criminal statutes the issue of exposing children to illegal drug activity.⁹ For example, in 14 States the manufacture or possession of methamphetamine in the presence of a child is a felony,¹⁰ and in four States, the manufacture or possession of any controlled substance in the presence of a child is considered a felony.¹¹ California, Mississippi, Montana, North Carolina, Ohio, and Washington State have enacted enhanced penalties for any conviction for the manufacture of methamphetamine when a child was on the premises where the crime occurred.

Exposing children to the manufacture, possession, or distribution of illegal drugs is considered child endangerment in seven States.¹² The exposure of a child to drugs or drug paraphernalia is a crime in North Dakota, Utah, and the Virgin Islands. In North Carolina and Wyoming, selling or giving an illegal drug to a child by any person is a felony.

⁴ Colorado, Illinois, Indiana, Iowa, Montana, New Mexico, Oregon, South Dakota, Tennessee, Washington, Wisconsin, and the District of Columbia.

⁵ Arizona, Arkansas, Iowa, New Mexico, North Dakota, and Oregon.

⁶ Arkansas, Florida, Hawaii, Illinois, Iowa, Minnesota, Texas, and Guam.

⁷ Iowa, Kentucky, Minnesota, New York, Rhode Island, and Texas.

⁸ Montana, South Dakota, Virginia, and the District of Columbia.

⁹ Alabama, Alaska, California, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Utah, Virginia, Washington, West Virginia, and Wyoming currently address the issue in their criminal statutes.

¹⁰ Georgia, Illinois, Iowa, Kansas, Louisiana, Montana, Nebraska, New Hampshire, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wyoming.

¹¹ Alabama, Idaho, Louisiana, and Ohio.

¹² Alaska, Delaware, Illinois, Iowa, Kansas, Missouri, and Montana.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.