

**WHAT'S INSIDE**

Prenatal drug exposure

Children exposed to  
illegal drug activity

Full-text excerpts of  
State laws

**To find statute  
information for a  
particular State,  
go to**

<https://www.childwelfare.gov/topics/systemwide/laws-policies/state/>



## 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.<sup>1</sup> 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.

<sup>1</sup> The word "approximately" is used to stress the fact that States frequently amend their laws. This information is current through April 2015. 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.

## 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 having withdrawal symptoms resulting from prenatal drug exposure.<sup>2</sup> Several States currently address this requirement in their statutes. Approximately 19 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; 14 States and the District of Columbia include this type of exposure in their definitions of child abuse or neglect.<sup>3</sup>

Some States specify in their statutes the response the CPS agency must make to reports of SENs. Maine requires the State agency to develop a plan of safe care for the infant. California, Maryland, Minnesota, Missouri, Nevada, Pennsylvania, and the District of Columbia require the agency to complete an assessment of needs for the infant and for the infant's family and to 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

<sup>2</sup> 42 U.S.C. § 5106a(b), as amended by the CAPTA Reauthorization Act of 2010 (P.L. 111-320). 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 <https://www.ncsacw.samhsa.gov/default.aspx>.

<sup>3</sup> Alaska, Arizona, Arkansas, California, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, Oklahoma, Pennsylvania, Utah, and Virginia have enacted specific reporting procedures for drug-exposed infants. Arizona, Arkansas, Colorado, Florida, Illinois, Indiana, Louisiana, 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.

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:

- Manufacturing a controlled substance in the presence of a child or on premises occupied by a child<sup>4</sup>
- Exposing a child to, or allowing a child to be present where, chemicals or equipment for the manufacture of controlled substances are used or stored<sup>5</sup>
- Selling, distributing, or giving drugs or alcohol to a child<sup>6</sup>
- Using a controlled substance that impairs the caregiver's ability to adequately care for the child<sup>7</sup>
- Exposing a child to the criminal sale or distribution of drugs<sup>8</sup>

Approximately 34 States and the U.S. Virgin Islands address in their criminal statutes the issue of exposing children to illegal drug activity.<sup>9</sup> For example, in 20 States the manufacture or possession of methamphetamine in the presence of a child is a felony,<sup>10</sup> while in 10 States, the manufacture or possession of any controlled substance in the presence of a child is considered a felony.<sup>11</sup> Nine States have enacted enhanced penalties for any conviction for the manufacture of methamphetamine when a child was on the premises where the crime occurred.<sup>12</sup>

<sup>4</sup> In 11 States (Alabama, Colorado, Indiana, Iowa, Montana, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, and Wisconsin) and the District of Columbia.

<sup>5</sup> In 8 States: Alabama, Arizona, Arkansas, Iowa, New Mexico, North Dakota, Oklahoma, and Oregon.

<sup>6</sup> In 7 States (Arkansas, Florida, Hawaii, Illinois, Iowa, Minnesota, and Texas) and Guam.

<sup>7</sup> In 11 States: California, Delaware, Florida, Iowa, Kentucky, Minnesota, New York, Oklahoma, Rhode Island, Texas, and West Virginia.

<sup>8</sup> Montana, South Dakota, and the District of Columbia.

<sup>9</sup> Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Utah, Virginia, Washington, West Virginia, and Wyoming currently address the issue in their criminal statutes.

<sup>10</sup> Arkansas, California, Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, New Hampshire, Ohio, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wyoming.

<sup>11</sup> Alabama, Colorado, Hawaii, Idaho, Indiana, Kentucky, Louisiana, New Mexico, Ohio, and Oregon.

<sup>12</sup> Arkansas, California, Hawaii, Mississippi, Montana, North Carolina, Ohio, Virginia, and Washington.

Exposing children to the manufacture, possession, or distribution of illegal drugs is considered child endangerment in 11 States.<sup>13</sup> The exposure of a child to drugs or drug paraphernalia is a crime in eight States and the Virgin Islands.<sup>14</sup> In North Carolina and Wyoming, selling or giving an illegal drug to a child by any person is a felony.

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.

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<sup>13</sup> Alaska, Arizona, Delaware, Illinois, Iowa, Kansas, Kentucky, Minnesota, Missouri, Montana, and Washington.

<sup>14</sup> Montana, Nebraska, New Hampshire, North Dakota, South Carolina, Utah, Washington, and Wyoming.

## Alabama

### Ala. Code § 13A-12-218

A person commits the crime of unlawful manufacture of a controlled substance in the first degree if he or she manufactures a controlled substance enumerated in Schedules I to V, inclusive, or possesses precursor substances in any amount with the intent to unlawfully manufacture a controlled substance, and two or more of the following conditions occurred in conjunction with that violation:

- Possession of a firearm
- Use of a booby trap
- The illegal possession, transportation, or disposal of hazardous or dangerous materials, or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, created a substantial risk to human health or safety or a danger to the environment
- A clandestine laboratory operation that was to take place or did take place within 500 feet of a residence, place of business, church, or school
- A clandestine laboratory operation that actually produced any amount of a specified controlled substance
- A clandestine laboratory operation for the production of controlled substances listed in Schedule I or Schedule II
- The presence of a person under age 17 during the manufacturing process

Unlawful manufacture of a controlled substance in the first degree is a Class A felony.

Schedules I to V controlled substances include opiates, opiate derivatives, hallucinogens, stimulants, depressants, and narcotics, as listed in §§ 20-2-23, 20-2-25, 20-2-27, 20-2-29, and 20-2-31.

### Ala. Code § 26-15-3.2

A responsible person commits the crime of chemical endangerment of exposing a child to an environment in which he or she does any of the following:

- Knowingly, recklessly, or intentionally causes or permits a child to be exposed to, to ingest or inhale, or to have contact with a controlled substance, chemical substance, or drug paraphernalia as defined in § 13A-12-260. A violation under this subdivision is a Class C felony.
- Violates the subdivision above, and a child suffers serious physical injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia. A violation under this subdivision is a Class B felony.
- Violates the subdivision above, and the exposure, ingestion, inhalation, or contact results in the death of the child. A violation under this subdivision is a Class A felony.

The court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

It is an affirmative defense to a violation of this section that the controlled substance was provided by lawful prescription for the child, and that it was administered to the child in accordance with the prescription instructions provided with the controlled substance.

## Alaska

### Alaska Stat. § 47.17.024

A practitioner of the healing arts involved in the delivery or care of an infant who the practitioner determines has been adversely affected by, or is withdrawing from exposure to, a controlled substance or alcohol shall immediately notify the nearest office of the Department of Health and Social Services of the infant's condition.

### Alaska Stat. § 11.51.110

A person commits the crime of endangering the welfare of a child in the second degree if the person, while caring for a child under age 10:

- Causes or allows the child to enter or remain in a dwelling or vehicle in which a controlled substance is stored in violation of chapter 11.71
- Is impaired by an intoxicant, whether or not prescribed for the person, and there is no third person who is at least age 12 and not impaired by an intoxicant present to care for the child

## American Samoa

This issue is not addressed in the statutes reviewed.

## Arizona

### Rev. Stat. § 13-3623(C)

For the purposes of subsections A and B of this section, the terms 'endangered' and 'abuse' include, but are not limited to, circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic, or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of § 13-3407(A)(3) or (4).

Notwithstanding any other provision of this section, a violation committed under circumstances described in this subsection does not require that a person have care or custody of the child or vulnerable adult.

### Rev. Stat. § 8-201(2), (24)

The term 'abuse' includes physical injury that results from permitting a child to enter or remain in any structure or vehicle in which volatile, toxic, or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug as defined in § 13-3401.

'Neglect' or 'neglected' means:

- Permitting a child to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purposes of manufacturing a dangerous drug as defined in § 13-3401
- A determination by a health professional that a newborn infant was exposed prenatally to a drug or substance listed in § 13-3401, and that this exposure was not the result of a medical treatment administered to the mother or the newborn infant by a health professional. This subdivision does not expand a health professional's duty to report neglect based on prenatal exposure to a drug or substance listed in § 13-3401 beyond the requirements prescribed pursuant to § 13-3620(E). The determination by the health professional shall be based on one or more of the following:
  - » Clinical indicators in the prenatal period including maternal and newborn presentation
  - » History of substance use or abuse
  - » Medical history
  - » The results of a toxicology or other laboratory test on the mother or the newborn infant
  - » A diagnosis by a health professional of an infant under age 1 with clinical findings consistent with fetal alcohol syndrome or fetal alcohol effects

### Rev. Stat. § 13-3620(E)

A health-care professional who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in § 13-3401 shall immediately report this information, or cause a report to be made, to the Department of Child Safety. For the purposes of this subsection, 'newborn infant' means a newborn infant who is under 30 days of age.

## Arkansas

### Ann. Code § 12-18-103(14)(B)

'Neglect' shall include:

- Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child
- At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child

As used in this subdivision, 'illegal substance' means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101, et seq. A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under this subdivision. A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under this subdivision.

**Ann. Code § 5-64-407**

A person who is found guilty of or who pleads guilty or nolo contendere to manufacture of methamphetamine (§ 5-64-423) or possession of drug paraphernalia with the purpose to manufacture methamphetamine (§ 5-64-443(a)(1)) may be subject to an enhanced sentence of an additional term of imprisonment of 10 years if the offense is committed:

- In the presence of a minor, elderly person, or incompetent person who may or may not be related to the person
- With a minor, elderly person, or incompetent person in the same home or building where the methamphetamine was being manufactured or the drug paraphernalia to manufacture methamphetamine was in use or was in preparation to be used
- With a minor, elderly person, or incompetent person present in the same immediate area or in the same vehicle at the time of the person's arrest for the offense

The enhanced portion of the sentence is consecutive to any other sentence imposed.

Any person sentenced under this section is not eligible for early release on parole or community correction transfer for the enhanced portion of the sentence.

As used in this section:

- 'Elderly person' means any person age 70 or older.
- 'Incompetent person' means any person who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated.
- 'Minor' means any person under age 18.

**Ann. Code § 12-18-103(3)(A)**

'Abuse' means any of the following acts or omissions by a parent; guardian; custodian; foster parent; person age 18 or older living in the home with a child, whether related or unrelated to the child; or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school; or any person legally responsible for the juvenile's welfare, but excluding the spouse of a minor:

- Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions
- Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
  - » Marijuana
  - » Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service
  - » A narcotic
  - » An over-the-counter drug, if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug
- Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine

**Ann. Code § 12-18-310**

All health-care providers involved in the delivery or care of infants shall:

- Contact the Department of Human Services regarding an infant born and affected with a fetal alcohol spectrum disorder
- Share all pertinent information, including health information, with the department regarding an infant born and affected with a fetal alcohol spectrum disorder

The department shall accept referrals, calls, and other communications from health-care providers involved in the delivery or care of infants born and affected with a fetal alcohol spectrum disorder. The department shall develop a plan of safe care for infants affected with a fetal alcohol spectrum disorder.

## California

### Health & Safety Code § 11379.7

Except as provided below, any person convicted of a violation of §11379.6(a) [manufacture of a controlled substance] or §11383 [possession of the chemicals or equipment used for such manufacture], or of an attempt to violate those sections, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under age 16 is present, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of 2 years in the State prison.

Any person convicted of a violation of § 11379.6(a) or § 11383, or of an attempt to violate those sections, as those sections relate to methamphetamine or phencyclidine, when the commission of the crime causes any child under age 16 to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of 5 years in the State prison.

As used in this section, 'structure' means any house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment.

### Welf. & Inst. Code § 300

Any child who comes within the following description is within the jurisdiction of the juvenile court which may adjudge that child to be a dependent child of the court: The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

### Penal Code § 11165.13

A positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to law.

If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department and not to a law enforcement agency.

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## Colorado

### Rev. Stat. § 19-3-401(3)(b)-(c)

A newborn child who is in a hospital setting shall not be taken into temporary protective custody without an order of the court. The order must include findings that an emergency situation exists and that the newborn child is seriously endangered. A newborn child may be detained in a hospital by a law enforcement officer upon the recommendation of a county department of social services, a physician, a registered nurse, a licensed practical nurse, or a physician's assistant while a court order is being pursued, but the newborn child must be released if a court order is denied. Court orders shall not be required in the following circumstances:

- When a newborn child is identified by a physician, registered nurse, licensed practical nurse, or physician's assistant engaged in the admission, care, or treatment of patients as being affected by substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure
- When the newborn child is subject to an environment exposing the newborn child to a laboratory for manufacturing controlled substances

### Rev. Stat. § 18-6-401(1)(c)

A person commits child abuse if, in the presence of a child, on the premises where a child is found or resides, or in a vehicle containing a child, the person knowingly engages in the manufacture or attempted manufacture of a controlled substance as defined by § 18-18-102(5); or knowingly possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers with the intent to use the product as an immediate precursor in the manufacture of a controlled substance. It shall be no defense to the crime of child abuse that the defendant did not know that a child was present, a child could be found, a child resided on the premises, or a vehicle contained a child.

A parent or lawful guardian of a child, or a person having the care or custody of a child, who knowingly allows the child to be present or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know that another person is engaged in the manufacture or attempted manufacture of methamphetamine commits child abuse.

A parent or lawful guardian of a child, or a person having the care or custody of a child, who knowingly allows the child to be present or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know that another person possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers with the intent to use the product as an immediate precursor in the manufacture of methamphetamine commits child abuse.

**Rev. Stat. § 19-1-103(1)(a)**

'Abuse' or 'child abuse or neglect' means an act or omission in one of the following categories that threatens the health or welfare of a child:

- Any case in which, in the presence of a child or on the premises where a child is found or resides, a controlled substance as defined in § 18-18-102(5) is manufactured or attempted to be manufactured
- Any case in which a child tests positive at birth for either a Schedule I controlled substance, including opiates, opiate derivatives, hallucinogens, stimulants, and depressants that have no legitimate medical use [as defined in § 18-18-203], or a Schedule II controlled substance, including any potentially addictive substance that is used or manufactured contrary to its current accepted medical use [as defined in § 18-18-204], unless the child tests positive for a Schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed

**Rev. Stat. § 19-3-102(1)(g)**

A child is neglected or dependent if the child tests positive at birth for either a Schedule I controlled substance, as defined in § 18-18-203, or a Schedule II controlled substance, as defined in § 18-18-204, unless the child tests positive for a Schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed.

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**Connecticut**

This issue is not addressed in the statutes reviewed.

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**Delaware**

**Ann. Code Tit. 11, § 1102**

A person is guilty of endangering the welfare of a child when:

- The person commits any offense set forth in chapter 47 of title 16 [Uniform Controlled Substances Act] in any dwelling, knowing that any child younger than age 18 is present in the dwelling at the time.
- The person provides or permits a child to consume or inhale any substance not prescribed to the child by a physician, as defined in title 16, §§ 4714, 4716, 4718, 4720, and 4722.

Endangering the welfare of a child shall be punished as follows:

- When the death of a child occurs while the child's welfare was endangered as defined above, endangering the welfare of a child is a class E felony.
- When serious physical injury to a child occurs while the child's welfare was endangered as defined above, endangering the welfare of a child is a class G felony.

**Ann. Code Tit. 10, § 901(18)**

'Neglect' or 'neglected child' means that a person is responsible for the care, custody, and/or control of the child; has the ability and financial means to provide for the care of the child; and chronically and severely abuses alcohol or a controlled substance, is not active in treatment for the abuse, and the abuse threatens the child's ability to receive care necessary for that child's safety and general well-being.



## District of Columbia

### Ann. Code Ann. § 4-1301.06a

Upon receipt of a report that a child is born addicted to or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth; has a controlled substance in his or her body as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or is regularly exposed to illegal drug-related activity in the home, the agency shall:

- Commence an initial investigation in accordance with §§ 4-1301.04(b) and 4-1301.06
- Determine whether the child should be removed temporarily from the home environment or can be protected in the home environment
- Commence a social investigation and provide social services if the initial investigation results in a substantiated report

A social investigation shall include a determination of whether there is reasonable evidence that:

- Any member of the child's home environment uses drugs illegally, is dependent on drugs, or needs drug abuse treatment.
- The child is exposed regularly to drug use in the home environment.
- The distribution or sale of illegal drugs or drug paraphernalia occurs in the child's home environment.
- Drug-related activity has contributed to or is likely to contribute to violent conduct within the child's home environment.

The social services shall include:

- Provision of drug treatment to any member of the child's home environment who is determined to be in need of drug treatment
- Measures to facilitate action by the child's family, with the assistance of the agency and the police if necessary, to eliminate the child's exposure to drug use or to the distribution or sale of illegal drugs or drug paraphernalia in the home environment
- Any other service authorized or required by this subchapter or other applicable laws or rules of the District of Columbia

### Ann. Code § 4-1321.02(d), (f)

Any licensed health professional, law enforcement officer, or humane officer of any agency charged with the enforcement of animal cruelty laws, except an undercover officer whose identity or investigation might be jeopardized, shall report immediately, in writing, to the Child and Family Services Agency that the law enforcement officer, humane officer of any agency charged with enforcement of animal cruelty laws, or health professional has reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to exposure to drug-related activity.

A licensed health professional who in his or her own professional or official capacity knows that a child under 12 months of age is diagnosed as having a fetal alcohol spectrum disorder shall immediately report or have a report made to the Child and Family Services Agency.

### Ann. Code § 16-2301(9)

'Neglected child' means a child:

- Who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth
- In whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian
- Who is regularly exposed to illegal drug-related activity in the home

The term 'drug-related activity' means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

## Florida

### Ann. Stat. § 39.01(30)(a)(2), (g)

'Harm' to a child's health or welfare can occur when any person:

- Purposely gives a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, judgment, or that result in sickness or internal injury
- Exposes a child to a controlled substance or alcohol

Exposure to a controlled substance or alcohol is established by:

- A test, administered at birth, that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant
- Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage

For the purposes of this paragraph, the terms 'drugs' and 'controlled substances' mean prescription drugs not prescribed for the child or the parent or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of § 893.03.

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## Georgia

### Ann. Code § 16-5-73(b)

Any person who intentionally causes or permits a child to be present where any person is manufacturing methamphetamine or possessing a chemical substance with the intent to manufacture methamphetamine shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than 2 years nor more than 15 years.

Any person who violates the paragraph above wherein a child receives serious injury as a result of such violation shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than 5 years nor more than 20 years.

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## Guam

### Ann. Code Tit. 19, § 13101(t)(5)

'Harm to a child's physical health or welfare' occurs in a case where there exists evidence of injury, including, but not limited to, any case where the child is provided with a controlled substance as defined by the Criminal and Correctional Code. However, this paragraph shall not apply to a child's family who provides such drugs to the child pursuant to the direction or prescription of a practitioner.

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## Hawaii

### Rev. Stat. § 712-1240.5

Except as provided below, any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under age 16 is present in the structure where the offense occurs, shall be sentenced to a term of 2 years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

Any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under age 18 is present in the structure where the offense occurs and causes the child to suffer serious or substantial bodily injury, shall be sentenced to a term of 5 years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

As used in this section, 'structure' means any house, apartment building, shop, warehouse, building, vessel, cargo container, motor vehicle, tent, recreational vehicle, trailer, or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance.

### Rev. Stat. § 350-1

'Child abuse or neglect' means the acts or omissions of any person or legal entity in any manner or degree related to the child, residing with the child, or otherwise responsible for the child's care, that have resulted in harm to the physical or psychological health or welfare of the child, who is under age 18, or have subjected the health or welfare of the child to any reasonably foreseeable, substantial risk of being harmed.

The acts or omissions are indicated for the purposes of reports by circumstances that include, but are not limited to, when the child is provided with dangerous, harmful, or detrimental drugs, provided that this paragraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner.

**Rev. Stat. § 587A-4**

'Harm' means damage or injury to a child's physical or psychological health or welfare, such as when the child is provided with dangerous, harmful, or detrimental drugs as defined in § 712-1240, except when a child's family administers drugs to the child as directed or prescribed by a practitioner.

**Idaho****Idaho Code § 37-2737A(1)-(2)**

Except as authorized in this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance as defined in Schedules I, II, III, and IV in this chapter, upon the same premises where a child under age 18 is present. Schedules I, II, III, and IV controlled substances include opiates, hallucinogens, cannabis, stimulants, depressants, anabolic steroids, hormones, and narcotics [as defined in §§ 37-2705, 37-2707, and 37-2709].

As used in this section, 'premises' means any:

- Motor vehicle or vessel
- Dwelling or rental unit including, but not limited to, an apartment, townhouse, condominium, mobile home, manufactured home, motel room, or hotel room
- Dwelling house, its curtilage, and any other outbuildings

**Illinois****Comp. Stat. Ch. 720, § 646/50**

Methamphetamine-related child endangerment: It is unlawful to engage in methamphetamine-related child endangerment. A person engages in methamphetamine-related child endangerment when the person knowingly endangers the life and health of a child by exposing or allowing exposure of the child to a methamphetamine-manufacturing environment. A person who violates the above paragraph is guilty of a Class 2 felony.

Aggravated methamphetamine-related child endangerment: It is unlawful to engage in aggravated methamphetamine-related child endangerment. A person engages in aggravated methamphetamine-related child endangerment when the person [commits methamphetamine-related child endangerment] and the child experiences death, great bodily harm, disability, or disfigurement as a result of the methamphetamine-related child endangerment. A person who violates the above paragraph is guilty of a Class X felony, subject to a term of imprisonment of not less than 6 years and not more than 30 years, and subject to a fine not to exceed \$100,000.

**Comp. Stat. Ch. 325, § 5/3**

'Abused child' means a child whose parent, immediate family member, any person responsible for the child's welfare, any individual residing in the same home as the child, or a paramour of the child's parent causes to be sold, transferred, distributed, or given to such child under age 18 a controlled substance, as defined by law, or in violation of the Methamphetamine Control and Community Protection Act, except for controlled substances that are prescribed in accordance with the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription.

'Neglected child' means any child who is not receiving the proper or necessary nourishment or medically indicated treatment, including food or care not provided, solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians, who otherwise is not receiving the proper or necessary support, medical care, or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing, and shelter; or who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in the Illinois Controlled Substances Act or a metabolite thereof.

**Comp. Stat. Ch. 325, § 5/7.3b**

All persons required to report may refer to the Department of Human Services any pregnant person in this State who is addicted as defined in the Alcoholism and Other Drug Abuse and Dependency Act.

The Department of Human Services shall notify the local Infant Mortality Reduction Network service provider or department-funded prenatal care provider in the area in which the person resides. The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance abuse service provider licensed by the

Department of Human Services or a licensed hospital that provides substance abuse treatment services. The local Infant Mortality Reduction Network service provider and department-funded prenatal care provider shall monitor the pregnant woman through the service program.

**Comp. Stat. Ch. 705, § 405/2-3(1)(c)**

Those who are neglected include any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in § 102(f) of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances that are present in newborn infant as the result of medical treatment administered to the mother or the newborn infant.

**Indiana**

**Ann. Code § 31-34-1-2**

A child is a 'child in need of services' if before the child becomes age 18:

- The child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian.
- The child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court.

Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

**Ann. Code §§ 31-34-1-10; 31-34-1-11**

Except as provided in statute, a child is a 'child in need of services' if:

- The child is born with fetal alcohol syndrome or any amount, including a trace amount, of a controlled substance or a legend drug in the child's body.
- The child has an injury, has abnormal physical or psychological development, or is at a substantial risk of a life-threatening condition that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy.
- The child needs care, treatment, or rehabilitation that the child is not receiving or is unlikely to be provided or accepted without the coercive intervention of the court.

**Ann. Code § 35-48-4-13.3**

A person who recklessly, knowingly, or intentionally takes a person younger than age 18 or an endangered adult (as defined in § 12-10-3-2) into a building, structure, vehicle, or other place that is being used by any person to unlawfully possess drugs or controlled substances or unlawfully manufacture, keep, offer for sale, sell, deliver, or finance the delivery of drugs or controlled substances, commits a Class A misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section.

**Iowa**

**Ann. Code § 232.2(6)**

'Child in need of assistance' means an unmarried child:

- Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care
- In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian
- Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child; knowingly allows such manufacture by another person in the presence of a child; or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance

'In the presence of a child' means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

'Dangerous substance' means any of the following:

- Amphetamine, its salts, isomers, or salts of its isomers
- Methamphetamine, its salts, isomers, or salts of its isomers
- A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in the process of manufacturing or as a precursor or intermediary in the manufacturing of an illegal or controlled substance

#### **Ann. Code § 232.77(2)**

If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed in utero, the health practitioner may perform or cause to be performed a medically relevant test, as defined in § 232.73, on the child.

The practitioner shall report any positive results of such a test on the child to the Department of Human Services. The department shall begin an investigation pursuant to law upon receipt of such a report.

A positive test result obtained prior to the birth of a child shall not be used for the criminal prosecution of a parent for acts and omissions resulting in intrauterine exposure of the child to an illegal drug.

#### **Ann. Code § 232.68(2)(f), (2)(g)**

'Child abuse' or 'abuse' occurs when:

- An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.
- The person responsible for the care of a child has, in the presence of the child, manufactured a dangerous substance, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

#### **Ann. Code § 726.6**

A person who is the parent, guardian, or person having custody or control over a child or a minor under age 18 with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured or where a product is possessed in violation of the law.

A person who commits child endangerment resulting in the death of a child or minor is guilty of a Class B felony. Notwithstanding § 902.9(1)(b), a person convicted of a violation of this subsection shall be confined for no more than 50 years.

A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a Class C felony.

A person who commits child endangerment resulting in bodily injury to a child or minor or child endangerment that does not result in a serious injury is guilty of a Class D felony.

A person who commits child endangerment that is not subject to penalty [as a Class C or D felony] is guilty of an aggravated misdemeanor.

## Kansas

### Ann. Stat. § 21-5601(b)-(c)

Aggravated endangering a child is:

- Recklessly causing or permitting a child under age 18 to be placed in a situation in which the child's life, body, or health is endangered
- Causing or permitting the child to be in an environment in which the person knows or reasonably should know that any person is distributing, possessing with intent to distribute, manufacturing, or attempting to manufacture any methamphetamine or analog thereof
- Causing or permitting the child to be in an environment in which the person knows or reasonably should know that drug paraphernalia or volatile, toxic, or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine or analog thereof

Aggravated endangering a child is a severity level 9 person felony. The sentence for a violation of aggravated endangering a child shall be served consecutively to any other term or terms of imprisonment imposed. The sentence shall not be considered a departure and shall not be subject to appeal.

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## Kentucky

### Rev. Stat. § 218A.1443

A person is guilty of controlled substance endangerment to a child in the third degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child receives physical injury as a result of the commission of the offense.

Controlled substance endangerment to a child in the third degree is a Class C felony.

### Rev. Stat. § 218A.1442

A person is guilty of controlled substance endangerment to a child in the second degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child receives serious physical injury as a result of the commission of the offense.

Controlled substance endangerment to a child in the second degree is a Class B felony.

### Rev. Stat. § 218A.1441

A person is guilty of controlled substance endangerment to a child in the first degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child dies as a result of the commission of the offense.

Controlled substance endangerment to a child in the first degree is a Class A felony.

### Rev. Stat. § 218A.1444

A person is guilty of controlled substance endangerment to a child in the fourth degree when he or she knowingly causes or permits a child to be present when any person is illegally manufacturing a controlled substance or methamphetamine or possesses a hazardous chemical substance with intent to illegally manufacture a controlled substance or methamphetamine under circumstances that place a child in danger of serious physical injury or death, if the child is not injured as a result of the commission of the offense.

Controlled substance endangerment to a child in the fourth degree is a Class D felony.

### Rev. Stat. § 600.020(1)(c)

'Abused or neglected child' means a child whose health or welfare is harmed or threatened with harm when his or her parent, guardian, person in a position of authority or special trust, or other person exercising custodial control or supervision of the child, engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse.

**Rev. Stat. § 214.160(2)-(6)**

The Cabinet for Health and Family Services shall, as often as necessary, publish a list of the five most frequently abused substances, including alcohol, by pregnant women in the Commonwealth. Any physician and any other person legally permitted to engage in attendance upon a pregnant woman in this State may perform a screening for alcohol or substance dependency or abuse, including a comprehensive history of such behavior. Any physician may administer a toxicology test to a pregnant woman under the physician's care within 8 hours after delivery to determine whether there is evidence that she has ingested alcohol, a controlled substance, or a substance identified on the list provided by the cabinet, or if the woman has obstetrical complications that are a medical indication of possible use of any such substance for a nonmedical purpose.

Any physician or person legally permitted to engage in attendance upon a pregnant woman may administer to each newborn infant born under that person's care a toxicology test to determine whether there is evidence of prenatal exposure to alcohol, a controlled substance, or a substance identified on the list provided by the cabinet, if the attending person has reason to believe, based on a medical assessment of the mother or the infant, that the mother used any such substance for a nonmedical purpose during the pregnancy.

The circumstances surrounding any positive toxicology finding shall be evaluated by the attending person to determine if abuse or neglect of the infant, as defined under § 600.020(1), has occurred and whether investigation by the cabinet is necessary.

No prenatal screening for alcohol or other substance abuse or positive toxicology finding shall be used as prosecutorial evidence.

No person shall conduct or cause to be conducted any toxicological test pursuant to this section on any pregnant woman without first informing the pregnant woman of the purpose of the test.

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**Louisiana****Rev. Stat. § 14:93**

Cruelty to juveniles is:

- The intentional or criminally negligent exposure by anyone age 17 or older of any child under age 17 to a clandestine laboratory operation [for the unlawful manufacture of methamphetamine], as defined by Rev. Stat. § 40:983, in a situation where it is foreseeable that the child may be physically harmed
- The intentional or criminally negligent allowing of any child under age 17 by any person over age 17 to be present during the manufacturing, distribution, or purchasing or attempted manufacturing, distribution, or purchasing of a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Law

Lack of knowledge of the child's age shall not be a defense. Whoever commits the crime of cruelty to juveniles shall be fined not more than \$1,000 or imprisoned with or without hard labor for not more than 10 years, or both.

**Ch. Code Art. 603(24)**

'Prenatal neglect' means the unlawful use of a controlled dangerous substance, as defined by Rev. Stat. § 40:961, et seq., by a mother during pregnancy, that results in symptoms of withdrawal in the infant or the presence of a controlled substance in the infant's body.

*The version below, as amended by Acts 2007, No. 396, § 1, shall not become effective unless and until sufficient funds are appropriated by the legislature for such purposes.*

'Prenatal neglect' means exposure to chronic or severe use of alcohol or the unlawful use of any controlled dangerous substance, as defined by Rev. Stat. § 40:961, et seq., or in a manner not lawfully prescribed, that results in symptoms of withdrawal in the newborn or the presence of a controlled substance or a metabolic thereof in his or her body, blood, urine, or meconium that is not the result of medical treatment, or observable and harmful effects in his or her physical appearance or functioning.

**Ch. Code Art. 610(G)**

If a physician has cause to believe that a mother of an infant unlawfully used a controlled dangerous substance during pregnancy, the physician shall order a toxicology test upon the infant, without the consent of the infant's parents or guardian, to determine whether there is evidence of prenatal neglect. If the test results are positive, the physician shall report the results as soon as possible. If the test results are negative, all identifying information shall be obliterated if the record is retained, unless the parent approves the inclusion of identifying information. Positive test results shall not be admissible in a criminal prosecution.

*The version below, as amended by Acts 2007, No. 396, § 1, shall not become effective unless and until sufficient funds are appropriated by the legislature for such purposes.*

If a physician has cause to believe that a newborn was exposed in utero to an unlawfully used controlled dangerous substance, the physician shall order a toxicology test upon the newborn, without the consent of the newborn's parents or guardian, to determine whether there is evidence of prenatal neglect. If the test results are positive, the physician shall issue a report as soon as possible, in accordance with this Article. If the test results are negative, all identifying information shall be obliterated if the record is retained, unless the parent approves the inclusion of identifying information. Positive test results shall not be admissible in a criminal prosecution.

If there are symptoms of withdrawal in the newborn or other observable and harmful effects in his or her physical appearance or functioning that a physician has cause to believe are due to the chronic or severe use of alcohol by the mother during pregnancy, the physician shall issue a report in accordance with this Article.

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## Maine

### Rev. Stat. Tit. 22, § 4011-B

A health-care provider involved in the delivery or care of an infant who the provider knows or has reasonable cause to suspect has been born affected by illegal substance abuse or is suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, shall notify the Department of Health and Human Services of that condition in the infant. The report required by this subsection must be made in the same manner as reports of abuse or neglect required by this subchapter.

This section, and any notification made pursuant to this section, may not be construed to establish a definition of 'abuse' or 'neglect.' This section, and any notification made pursuant to this section, may not be construed to require prosecution for any illegal action, including, but not limited to, the act of exposing a fetus to drugs or other substances.

### Rev. Stat. Tit. 22, § 4004(2)(E)-(F)

The department shall act to protect abused and neglected children and children in circumstances that present a substantial risk of abuse and neglect, to prevent further abuse and neglect, to enhance the welfare of these children and their families, and to preserve family life wherever possible. The department shall:

- If, after investigation, the department does not file a child protection petition under § 4032 but does open a case to provide services to the family to alleviate child abuse and neglect in the home, assign a caseworker, who shall:
  - » Provide information about rehabilitation and other services that may be available to assist the family
  - » Develop with the family a written child and family plan that identifies the problems in the family and the services needed to address those problems; describes responsibilities for completing the services, including, but not limited to, payment for services, transportation, and child care services and responsibilities for seeking out and participating in services; and states the names, addresses, and telephone numbers of any relatives or family friends known to the department or parent to be available as resources to the family
- File a child protection petition under § 4032 if, after investigation, the department determines that a child is in immediate risk of serious harm or in jeopardy as defined in this chapter

### Rev. Stat. Tit. 22, § 4004-B

The department shall act to protect infants born identified as being affected by illegal substance abuse, demonstrating withdrawal symptoms resulting from prenatal drug exposure, whether the prenatal exposure was to legal or illegal drugs, or having fetal alcohol spectrum disorders, regardless of whether the infant is abused or neglected. The department shall:

- Receive notifications of infants who may be affected by illegal substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure or who have fetal alcohol spectrum disorders
- Investigate promptly notifications received of infants born who may be affected by illegal substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure or who have fetal alcohol spectrum disorders as determined to be necessary by the department to protect the infant
- Determine whether each infant for whom the department conducts an investigation is affected by illegal substance abuse, demonstrates withdrawal symptoms resulting from prenatal drug exposure, or has fetal alcohol spectrum disorders
- Determine whether the infant for whom the department conducts an investigation is abused or neglected and, if so, determine the degree of harm or threatened harm in each case



- For each infant whom the department determines to be affected by illegal substance abuse, to be demonstrating withdrawal symptoms resulting from prenatal drug exposure, or to have fetal alcohol spectrum disorders, develop, with the assistance of any health-care provider involved in the mother's or the child's medical or mental health care, a plan for the safe care of the infant and, in appropriate cases, refer the child, mother, or both to a social service agency or voluntary substance abuse prevention service
- For each infant whom the department determines to be abused or neglected, comply with § 4004(2)(E)-(F).

## Maryland

### Family Law § 5-706.3(d)

The Department of Human Resources, in cooperation with the Department of Health and Mental Hygiene, shall develop intervention systems in at least four counties designated by the Secretary of Human Resources that include drug treatment for a mother of a child who is born drug-exposed and supportive services for the family of the child.

An intervention shall be initiated when a child is born drug-exposed and medical personnel have determined that the child is at a high risk of abuse or neglect.

Subject to the provisions above, the local Department of Social Services and the Department of Health and Mental Hygiene shall assist the mother of a child who is born drug-exposed in obtaining drug treatment and providing supportive services to maintain family unity.

A Child in Need of Assistance [CINA] petition shall be filed on behalf of a child who is born drug-exposed if:

- The mother refuses the recommended level of drug treatment or does not successfully complete the recommended level of drug treatment.
- The mother is unable to provide adequate care for the child.
- The father is unable to provide adequate care for the child.

### Crts. & Jud. Proc. Code § 3-818

Within 1 year after a child's birth, there is a presumption that a child is not receiving proper care and attention from the mother for purposes of § 3-801(f)(2) of this subtitle if:

- The child was born exposed to cocaine, heroin, or methamphetamine, or a derivative of cocaine, heroin, or methamphetamine, as evidenced by any appropriate tests of the mother or child.
- Upon admission to a hospital for delivery of the child, the mother tested positive for cocaine, heroin, or methamphetamine, or a derivative of cocaine, heroin, or methamphetamine, as evidenced by any appropriate toxicology test.
- Drug treatment is made available to the mother and the mother refuses the recommended level of drug treatment or does not successfully complete the recommended level of drug treatment.

### Family Law § 5-710(b)

Promptly after receiving a report from a hospital or health practitioner of suspected neglect related to drug abuse and conducting an appropriate investigation, the local department may file a petition alleging that the child is in need of assistance under Title 3, Subtitle 8 of the Courts Article, and offer the mother admission into a drug treatment program.

The local department may initiate a judicial proceeding to terminate a mother's parental rights, if the local department offers the mother admission into a drug treatment program under this subsection within 90 days after the birth of the child and if the mother:

- Does not accept admission to the program or its equivalent within 45 days after the offer is made
- Does not accept the recommended level of drug treatment within 45 days after the offer is made
- Fails to fully participate in the program or its equivalent

## Massachusetts

### Gen. Laws Ann. Ch. 119, § 51A

A mandated reporter who, in his or her professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from: (i) abuse inflicted upon him or her that causes harm or substantial risk of harm to the child's health or welfare, including sexual abuse; (ii) neglect, including malnutrition; or (iii) physical dependence upon an addictive drug at birth, shall immediately communicate with the Department of Children and Families orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect.

## Michigan

### Comp. Laws § 722.623a

A person who is required to report suspected child abuse or neglect and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body shall report to the department in the same manner as required of other reports.

A report is not required under this section if the person knows that the alcohol, controlled substance, or metabolite, or the child's symptoms, are the result of medical treatment administered to the newborn infant or his or her mother.

## Minnesota

### Ann. Stat. § 626.5561, Subd. 2

Upon receipt of a report, the local welfare agency shall immediately conduct an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. The local welfare agency also may take any appropriate action under chapter 253B, including seeking an emergency admission under §253B.05. The local welfare agency shall seek an emergency admission under § 253B.05 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

### Ann. Stat. § 626.556, Subd. 2(f), (g)

The term 'neglect' includes:

- Prenatal exposure to a controlled substance, as defined in § 253B.02, subd. 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or on the child at birth, medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder
- Chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety

The term 'physical abuse' includes purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances that were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, judgment, or that results in sickness or internal injury; or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances.

### Ann. Stat. § 626.5561, Subd. 1

Except as provided below, a mandated reporter shall immediately report to the local welfare agency if the reporter knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.

A health-care professional or a social service professional who is mandated to report is exempt from reporting a woman's use or consumption of tetrahydrocannabinol or alcoholic beverages during pregnancy if the professional is providing the woman with prenatal care or other health-care services.

Any person may make a voluntary report if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.

An oral report shall be made immediately by telephone or otherwise. An oral report made by a mandated reporter shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the local welfare agency. Any report shall be of sufficient content to identify the pregnant woman, the nature and extent of the use, if known, and the name and address of the reporter.

For purposes of this section, 'prenatal care' means the comprehensive package of medical and psychological support provided throughout the pregnancy.

**Ann. Stat. § 626.5562**

A physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within 8 hours after delivery to determine whether there is evidence that she has ingested a controlled substance, if the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose. If the test results are positive, the physician shall report the results. A negative test result does not eliminate the obligation to report if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose.

A physician shall administer to each newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance if the physician has reason to believe, based on a medical assessment of the mother or the infant, that the mother used a controlled substance for a nonmedical purpose during the pregnancy. If the test results are positive, the physician shall report the results as neglect. A negative test result does not eliminate the obligation to report if other medical evidence of prenatal exposure to a controlled substance is present.

Physicians shall report to the Department of Health the results of tests performed. A report shall be made on the Certificate of Live Birth Medical Supplement or the Report of Fetal Death Medical Supplement filed on or after February 1, 1991.

**Ann. Stat. § 609.378**

A parent, legal guardian, or caregiver who endangers the child's person or health by knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with the intent to manufacture, or possessing a controlled substance, as defined in statute, is guilty of child endangerment and may be sentenced to imprisonment for not more than 1 year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than 5 years or to payment of a fine of not more than \$10,000, or both.

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**Mississippi****Ann. Code § 41-29-313**

It is unlawful for any person to knowingly or intentionally:

- Purchase, possess, transfer, manufacture, attempt to manufacture, or distribute any two or more of the listed precursor chemicals or drugs in any amount with the intent to unlawfully manufacture a controlled substance
- Purchase, possess, transfer, manufacture, attempt to manufacture, or distribute any two or more of the listed precursor chemicals or drugs in any amount, knowing, or under circumstances where one reasonably should know, that the listed precursor chemical or drug will be used to unlawfully manufacture a controlled substance

Any person who violates this subsection, upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed 8 years and shall be fined not less than \$5,000 nor more than \$50,000, or both.

Any person who violates the provisions of this section with children under age 18 present may be subject to a term of imprisonment, a fine, or both, of twice that provided in this section.

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**Missouri****Ann. Stat. § 191.737(1)-(3), (5)**

Notwithstanding the physician-patient privilege, any physician or health-care provider may refer to the Department of Health families in which children may have been exposed to alcohol or a controlled substance as defined by law as evidenced by:

- Medical documentation of signs and symptoms consistent with controlled substances or alcohol exposure in the child at birth
- Results of a confirmed toxicology test for controlled substances performed at birth on the mother or the child
- A written assessment made or approved by a physician, health-care provider, or the Division of Family Services that documents the child as being at risk of abuse or neglect

Nothing in this section shall preclude a physician or other mandated reporter from reporting abuse or neglect of a child as required pursuant to the provisions of the reporting laws.

Upon notification, the Department of Health and Senior Services shall offer service coordination services to the family. The department shall coordinate social services, health care, mental health services, and needed education and rehabilitation services. Service coordination services shall be initiated within 72 hours of notification. The Department of Health and Senior Services shall notify the Department of Social Services and the Department of Mental Health within 72 hours of initial notification.

Referral and associated documentation provided for in this section shall be confidential and shall not be used in any criminal prosecution.

#### **Ann. Stat. § 568.045**

*Effective until January 1, 2017:* A person commits the crime of endangering the welfare of a child in the first degree if:

- The person knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child younger than age 17.
- Such person enlists the aid, either through payment or coercion, of a person younger than age 17 to unlawfully manufacture, compound, produce, prepare, sell, transport, test, or analyze amphetamine or methamphetamine or any of their analogues, or to obtain any material used to manufacture, compound, produce, prepare, test, or analyze amphetamine or methamphetamine or any of their analogues.
- Such person, in the presence of a person younger than age 17 or in a residence where a person younger than age 17 resides, unlawfully manufactures, or attempts to manufacture, compounds, possesses, produces, prepares, sells, transports, tests, or analyzes amphetamine or methamphetamine or any of their analogues.

Endangering the welfare of a child in the first degree is a Class C felony unless the offense is committed as part of a ritual or ceremony, or except on a second or subsequent offense, in which case the crime is a Class B felony.

This section shall be known as 'Hope's Law.'

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## **Montana**

### **Ann. Code § 41-3-102(7)(b)**

'Child abuse or neglect' includes exposing a child to the criminal distribution of dangerous drugs, as prohibited by § 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by § 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by § 45-9-132.

### **Ann. Code § 45-5-622(3), (5)(b)**

A person, whether or not the person is supervising the welfare of a child younger than age 18, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:

- Produces or manufactures methamphetamine or attempts to produce or manufacture methamphetamine
- Possesses any material, compound, mixture, or preparation that contains any combination of the items listed in § 45-9-107 with intent to manufacture methamphetamine
- Causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine or be exposed to or have contact with methamphetamine paraphernalia

A person convicted under the subsection above is guilty of a felony and shall be imprisoned in the State prison for a term not to exceed 5 years and may be fined an amount not to exceed \$10,000, or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed \$25,000 or be imprisoned for a term not to exceed 10 years, or both. Prosecution or conviction of a violation of this subsection does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

### **Ann. Code § 41-3-201(3)**

A physician or other health-care professional involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in § 50-32-101.

**Ann. Code § 45-9-132(3)**

A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed \$50,000, be imprisoned in a State prison for a term not to exceed 50 years, or both, if the operation of an unlawful clandestine laboratory or any phase of the operation:

- Created a substantial risk of death of or serious bodily injury to another
- Took place within 500 feet of a residence, business, church, or school
- Took place in the presence of a person younger than age 18

**Nebraska****Rev. Stat. § 28-457**

Any person who knowingly or intentionally causes or permits a child or vulnerable adult to inhale or have contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second or subsequent conviction under this subsection, any person so offending is guilty of a Class IV felony.

Any person who knowingly or intentionally causes or permits a child or vulnerable adult to ingest methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second or subsequent conviction under this subsection, any person so offending shall be guilty of a Class IIIA felony.

Any child or vulnerable adult who resides with a person violating the subsections above shall be taken into protective custody as provided in the Adult Protective Services Act or the Nebraska Juvenile Code.

Any person who violates the subsections above and a child or vulnerable adult actually suffers serious bodily injury by ingestion of, inhalation of, or contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class IIIA felony unless the ingestion, inhalation, or contact results in the death of the child or vulnerable adult, in which case the person is guilty of a Class IB felony.

**Nevada****Rev. Stat. § 432B.220(3)**

Any person who is a mandated reporter who delivers or provides medical services to a newborn infant and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that the newborn infant has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency that provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency that provides child welfare services for appropriate counseling, training, or other services. A notification and referral to an agency that provides child welfare services shall not be construed to require prosecution for any illegal action.

**New Hampshire****Rev. Stat. § 639-A:3**

A person convicted of an offense under § 639-A:2 shall be guilty of a felony and, notwithstanding § 651:2, may be sentenced to imprisonment for not more than 5 years or a fine of up to \$10,000, or both.

A prosecution or conviction under this chapter is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

**Rev. Stat. § 639-A:2**

No person shall knowingly engage in any of the following activities in the presence of a child or incapacitated adult; in the residence of a child or an incapacitated adult; in a building, structure, conveyance, or outdoor location where a child or incapacitated adult might reasonably be expected to be present; within any drug-free school zone; in a room offered to the public for overnight accommodations; or in any multiple unit residential building:

- Manufacturing or attempting to manufacture methamphetamine
- Storing any chemical substance

- Storing or disposing of any methamphetamine waste products
- Storing or disposing of any methamphetamine paraphernalia

No person shall knowingly cause or permit a child or incapacitated adult to inhale, be exposed to, have contact with, or ingest methamphetamine, a chemical substance, or methamphetamine paraphernalia.

No person shall, with the intent to engage in any prohibited conduct under the first paragraph above, knowingly cause or permit any child or incapacitated adult to buy or otherwise obtain methamphetamine paraphernalia.

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### **New Jersey**

This issue is not addressed in the statutes reviewed.

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### **New Mexico**

#### **Ann. Stat. § 30-6-1(l)-(j)**

Evidence that demonstrates that a child has been knowingly, intentionally, or negligently allowed to enter or remain in a motor vehicle, building, or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.

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### **New York**

#### **Soc. Serv. Law § 413(4)**

Any person, institution, school, facility, agency, organization, partnership, or corporation that employs persons who are mandated to report suspected incidents of child abuse or maltreatment and whose employees, in the normal course of their employment travel to locations where children reside, shall provide, consistent with § 421 of this title, all current and new employees with information on recognizing the signs of an unlawful methamphetamine laboratory. Pursuant to § 19.27 of the mental hygiene law, the Office of Alcoholism and Substance Abuse Services shall make available to such employers information on recognizing the signs of unlawful methamphetamine laboratories.

#### **Soc. Serv. Law § 371(4-a)**

'Neglected child' means a child younger than age 18 whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his or her parent or other person legally responsible for his or her care to exercise a minimum degree of care...by misusing a drug or drugs, or by misusing alcoholic beverages to the extent that he or she loses self-control of his or her actions, or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he or she loses self-control of his or her actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired.

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### **North Carolina**

#### **Ann. Stat. § 15A-1340.16(a), (b), (c), (d)(16) & (16a)**

[When imposing a sentence upon conviction of a crime,] the court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court.

An aggravated or mitigated sentence is allowed if the jury or the court finds that aggravating factors exist or the court finds that mitigating factors exist. In such case, the court may depart from the presumptive range of sentences specified in § 15A-1340.17(c)(2). If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in [the chart of punishments in] § 15A-1340.17(c)(4).

If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, the court may impose a sentence that is permitted by the mitigated range described in § 15A-1340.17(c)(3). Aggravating factors include:

- The offense involved the sale or delivery of a controlled substance to a minor.
- The offense is the manufacture of methamphetamine and was committed where a person under age 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its byproducts, or its waste.

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## North Dakota

### Cent. Code § 50-25.1-02(13)

'Prenatal exposure to a controlled substance' means use of a controlled substance, as defined in chapter 19-03.1, by a pregnant woman for a nonmedical purpose during pregnancy as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery of the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance.

### Cent. Code § 19-03.1-22.2

Unless a greater penalty is otherwise provided by law, a person who knowingly or intentionally causes or permits a child or vulnerable adult to be exposed to, to ingest or inhale, or to have contact with a controlled substance, chemical substance, or drug paraphernalia is guilty of a Class C felony.

Unless a greater penalty is otherwise provided by law, a person who violates the subsection above, and a child or vulnerable adult actually suffers bodily injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia, is guilty of a Class B felony.

If the exposure, ingestion, inhalation, or contact results in the death of the child or vulnerable adult, the person is guilty of a Class A felony.

### Cent. Code § 27-20-02(8)

'Deprived child' means a child who:

- Was subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance in a manner not lawfully prescribed by a practitioner
- Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug

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## Northern Mariana Islands

This issue is not addressed in the statutes reviewed.

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## Ohio

### Rev. Code § 2919.22(B)(6), (E)(3)

No person shall allow the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of the unit, of any act in violation of § 2925.04 [prohibiting the cultivation of marijuana or the manufacture of a controlled substance] or § 2925.041 [prohibiting the possession of any of the chemicals used in the manufacture of a controlled substance] when the person knows that the act is occurring, whether or not any person is prosecuted or convicted of the violation that is the basis of the violation of this section.

If the drug involved [in an offense described above] is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

- If the violation is third degree felony, there shall be a mandatory prison term that is not less than 2 years.
- If the offender previously has been convicted of or pleaded guilty to a third degree felony, there shall be a mandatory prison term that is not less than 5 years.
- If the violation is a second degree felony, there shall be a mandatory prison term that is not less than 3 years.
- If the offender previously has been convicted of or pleaded guilty to a second degree felony, there shall be a mandatory prison term that is not less than 5 years.

## Oklahoma

### Ann. Stat. Tit. 10A, § 1-2-101

Every physician, surgeon, or other health-care professional, including doctors of medicine, licensed osteopathic physicians, residents, and interns, or any other health-care professional attending the birth of a child who tests positive for alcohol or a controlled dangerous substance shall promptly report the matter to the Department of Human Services.

### Ann. Stat. Tit. 10A, § 1-2-102(A)(4)

Whenever the department determines there is a child that meets the definition of a 'drug-endangered child,' as defined in § 1-1-105 of this title, or a child has been diagnosed with fetal alcohol syndrome, the department shall conduct an investigation of the allegations and shall not limit the evaluation of the circumstances to an assessment.

### Ann. Stat. Tit. 10A, § 1-1-105(20)(e), (22), (47)(b)

The term 'deprived child' includes a child who is a child in need of special care and treatment because of the child's physical or mental condition, and the child's parents, legal guardian, or other custodian is unable or willfully fails to provide such special care and treatment. As used in this paragraph, a child in need of special care and treatment includes, but is not limited to, a child who at birth tests positive for alcohol or a controlled dangerous substance and who, pursuant to a drug or alcohol screen of the child and an assessment of the parent, is determined to be at risk of harm or threatened harm to the health or safety of a child.

'Drug-endangered child' means a child who is at risk of suffering physical, psychological, or sexual harm as a result of the use, possession, distribution, manufacture, or cultivation of controlled substances, or the attempt of any of these acts, by a person responsible for the health, safety, or welfare of the child, as defined in paragraph 51 of this section. This term includes circumstances in which the substance abuse of the person responsible for the health, safety, or welfare of the child interferes with that person's ability to parent and provide a safe and nurturing environment for the child. The term also includes newborns who test positive for a controlled dangerous substance, with the exception of those substances administered under the care of a physician.

The term 'neglect' includes the failure or omission to protect a child from exposure to the use, possession, sale, or manufacture of illegal drugs.

## Oregon

### Rev. Stat. § 163.547

A person having custody or control of a child under age 16 commits the crime of child neglect in the first degree if the person knowingly leaves the child or allows the child to stay:

- In a vehicle where controlled substances are being criminally delivered or manufactured
- In or upon premises and in the immediate proximity where controlled substances are criminally delivered, manufactured for consideration or profit, or where a chemical reaction involving one or more precursor substances:
  - » Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking, or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance
  - » Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking, or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance and the premises have not been certified as fit for use under § 453.885
- In or upon premises that have been determined to be not fit for use under §§ 453.855 to 453.912

As used in this subsection, 'vehicle' and 'premises' do not include public places, as defined in § 161.015.

Child neglect in the first degree is a Class B felony.

This section does not apply if the controlled substance is marijuana and is delivered for no consideration.

The Oregon Criminal Justice Commission shall classify child neglect in the first degree as crime category 6 of the sentencing guidelines grid of the commission if the controlled substance being delivered or manufactured is methamphetamine.

### Rev. Stat. § 419B.005

'Abuse' means:

- Permitting a person younger than age 18 to enter or remain in or upon premises where methamphetamines are being manufactured
- Unlawful exposure to a controlled substance that subjects a child to a substantial risk of harm to the child's health or safety



## Pennsylvania

### Cons. Stat. Tit. 23, § 6303(b.1)(8)(vi)

The term 'child abuse' includes intentionally, knowingly, or recklessly causing a child to be present at a location while a violation of Cons. Stat. tit. 18, § 7508.2 (relating to operation of a methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

### Cons. Stat. Tit. 23, § 6386

A health-care provider shall immediately make a report or cause a report to be made to the appropriate county agency if the provider is involved in the delivery or care of a child under 1 year of age who is born and identified as being affected by any of the following:

- Illegal substance abuse by the child's mother
- Withdrawal symptoms resulting from prenatal drug exposure
- A fetal alcohol spectrum disorder

The county agency shall perform a safety assessment or risk assessment, or both, for the child and determine whether child protective services or general protective services are warranted.

### Pa. Stat. Tit. 35, § 780-113(a)(38), (p)

The following acts and the causing thereof within the Commonwealth are hereby prohibited: The unlawful manufacture of methamphetamine or phencyclidine or their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation:

- In a structure where any child under age 18 is present
- Where the manufacturing of methamphetamine or phencyclidine causes any child under age 18 to suffer bodily injury

Any person who violates the first subsection above is guilty of a felony of the third degree and upon conviction thereof shall be sentenced to not more than 7 years in prison and a fine of not more than \$25,000, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

Any person who violates the second subsection above is guilty of a felony of the second degree and upon conviction thereof shall be sentenced to not more than 10 years in prison and a fine of not more than \$50,000, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

## Puerto Rico

This issue is not addressed in the statutes reviewed.

## Rhode Island

### Gen. Laws § 40-11-2(1)

'Abused and/or neglected child' means a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare fails to provide the child with a minimum degree of care or proper supervision or guardianship because of his or her unwillingness or inability to do so by situations or conditions such as, but not limited to, social problems, mental incompetency, or the use of a drug, drugs, or alcohol to the extent that the parent or other person responsible for the child's welfare loses his or her ability or is unwilling to properly care for the child.

## South Carolina

### Ann. Code § 63-7-1660(F)(1)

It is presumed that a newborn is an abused or neglected child as defined in § 63-7-20 and that the child cannot be protected from further harm without being removed from the custody of the mother upon proof that:

- A blood or urine test of the child at birth or a blood or urine test of the mother at birth shows the presence of any amount of a controlled substance or a metabolite of a controlled substance, unless the presence of the substance or the metabolite is the result of medical treatment administered to the mother of the infant or the infant.
- The child has a medical diagnosis of fetal alcohol syndrome.

- A blood or urine test of another child of the mother or a blood or urine test of the mother at the birth of another child showed the presence of any amount of a controlled substance or a metabolite of a controlled substance, unless the presence of the substance or the metabolite was the result of medical treatment administered to the mother of the infant or the infant.
- Another child of the mother has a medical diagnosis of fetal alcohol syndrome.

#### **Ann. Code § 44-53-378**

It is unlawful for a person who is age 18 or older to:

- Either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufacture amphetamine, its salts, isomers, or salts of isomers; or methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor child
- Knowingly permit a child to be in an environment where a person is selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture amphetamine or methamphetamine
- Knowingly permit a child to be in an environment where drug paraphernalia or volatile, toxic, or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture amphetamine or methamphetamine

A person who violates any of the above subsections, upon conviction, for a first offense must be imprisoned not more than 5 years or fined not more than \$5,000, or both. Upon conviction for a second or subsequent offense, the person must be imprisoned not more than 10 years or fined not more than \$10,000, or both.

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### **South Dakota**

#### **Codified Laws § 26-8A-2(9)**

'Abused or neglected child' includes a child:

- Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by statute
- Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance

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### **Tennessee**

#### **Ann. Code § 37-1-102(23)(D)**

'Severe child abuse' means knowingly allowing a child to be present within a structure where the act of creating methamphetamine is occurring.

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### **Texas**

#### **Health & Safety Code § 468.102**

The Department of Family and Protective Services shall establish a drug-endangered child initiative aimed at protecting children who are exposed to methamphetamine or to chemicals and other hazardous materials used in the illicit manufacture of methamphetamine.

#### **Health & Safety Code § 468.103**

To the extent that reporting does not interfere with an ongoing criminal investigation, the Department of Public Safety of the State of Texas and each local law enforcement agency shall report to the department on discovering the presence of a child in a location where methamphetamine is manufactured.

The department shall maintain a record of reports received under this section and shall include in the record information regarding actions taken by the department to ensure the child's safety and well-being.

**Fam. Code § 261.001**

'Abuse' includes the following acts or omissions by a person:

- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning
- The current use by a person of a controlled substance as defined by the Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child
- Causing, expressly permitting, or encouraging a child to use a controlled substance

'Born addicted to alcohol or a controlled substance' means a child:

- Who is born to a mother who, during the pregnancy, used a controlled substance, as defined by the Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol
- Who, after birth as a result of the mother's use of the controlled substance or alcohol:
  - » Experiences observable withdrawal from the alcohol or controlled substance
  - » Exhibits observable or harmful effects in the child's physical appearance or functioning
  - » Exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids

**Utah****Ann. Code § 76-5-112.5**

'Chemical substance' means:

- A substance intended to be used as a precursor in the manufacture of a controlled substance
- A substance intended to be used in the manufacture of a controlled substance
- Any fumes or by-product resulting from the manufacture of a controlled substance

'Exposed to' means that the child:

- Is able to access or view an unlawfully possessed controlled substance or chemical substance
- Has the reasonable capacity to access drug paraphernalia
- Is able to smell an odor produced during, or as a result of, the manufacture or production of a controlled substance

Unless a greater penalty is otherwise provided by law:

- A person is guilty of a felony of the third degree if the person knowingly or intentionally causes or permits a child to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia.
- A person is guilty of a felony of the second degree if:
  - » The person engages in the conduct described above.
  - » As a result of that conduct, a child suffers bodily injury, substantial bodily injury, or serious bodily injury.
- A person is guilty of a felony of the first degree if the person engages in the conduct described above, and as a result of that conduct, a child dies.

It is an affirmative defense to a violation of this section that the controlled substance was obtained by lawful prescription and is used or possessed by the person to whom it was lawfully prescribed.

The penalties described in this section are separate from, and in addition to, the penalties and enhancements described in Title 58, Occupations and Professions.

**Ann. Code § 62A-4a-404**

When an individual, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child and determines that the child, at the time of birth, has fetal alcohol syndrome, fetal alcohol spectrum disorder, or fetal drug dependency, the individual shall report that determination to the Division of Child and Family Services as soon as possible.

**Vermont**

This issue is not addressed in the statutes reviewed.

## Virgin Islands

### Ann. Code Tit. 14, § 504

Any person who is responsible for the safety or welfare of a child, including, but not limited to, a child's parent, stepparent, guardian, schoolteacher, or baby sitter, who neglects a child, or who knowingly, recklessly, or negligently causes or allows a child to suffer physical, mental, or emotional injury, or who knowingly, recklessly, or negligently deprives a child of any of the basic necessities of life, shall be punished by a fine of not less than \$500, or by imprisonment of not more than 15 years, or both.

### Ann. Code Tit. 14, § 503

'Neglect' means to place a child or allow a child to be placed in a situation that a reasonable person should know is dangerous to the child's health or welfare, and includes, but is not limited to, leaving a child in the care of any person known to use, possess, or sell illegal drugs or abuse alcohol.

## Virginia

### Ann. Code Ann. § 18.2-248.02

Any person age 18 or older who knowingly allows (i) a minor under age 15, (ii) a minor age 15 or older with whom he or she maintains a custodial relationship, including but not limited to as a parent, stepparent, grandparent, step-grandparent, or who stands in loco parentis with respect to the minor, or (iii) a mentally incapacitated or physically helpless person of any age, to be present in the same dwelling, apartment, unit of a hotel, garage, shed, or vehicle during the manufacture or attempted manufacture of methamphetamine, as prohibited by § 18.2-248(C1), is guilty of a felony punishable by imprisonment for no less than 10 nor more than 40 years. This penalty shall be in addition to and served consecutively with any other sentence.

### Ann. Code § 63.2-1509(B)

A report is required when, in his or her professional or official capacity, a reporter has reason to suspect that a child is abused or neglected. For purposes of this section, 'reason to suspect that a child is abused or neglected' shall include:

- A finding made by a health-care provider within 6 weeks of the birth of a child that the results of toxicology studies of the child indicate the presence of a controlled substance not prescribed for the mother by a physician
- A finding made by a health-care provider within 6 weeks of the birth of a child that the child was born dependent on a controlled substance that was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms
- A diagnosis made by a health-care provider at any time following a child's birth that the child has an illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance that was not prescribed by a physician for the mother or the child
- A diagnosis made by a health-care provider at any time following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol

When 'reason to suspect' is based upon this subsection, that fact shall be included in the report along with the facts relied upon by the person making the report.

## Washington

### Rev. Code § 9A.42.100

A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers, that are being used in the manufacture of methamphetamine, including its salts, isomers, and salts of isomers. Endangerment with a controlled substance is a Class B felony.

### Rev. Code § 26.44.170(1), (3)

When, as a result of a report of alleged child abuse or neglect, an investigation is made that includes an in-person contact with the person who is alleged to have committed the abuse or neglect, there shall be a determination of whether it is probable that the use of alcohol or controlled substances is a contributing factor to the alleged abuse or neglect.

If a determination is made that there is probable cause to believe abuse of alcohol or controlled substances has contributed to the child abuse or neglect, the Department of Social and Health Services shall, within available funds, cause a comprehensive chemical dependency evaluation to be made of the person or persons so identified. The evaluation shall be conducted by a physician or persons certified under rules adopted by the department to make such an evaluation.

**Rev. Code § 26.44.200**

A law enforcement agency in the course of investigating an allegation under § 69.50.401(a) relating to manufacture of methamphetamine, or an allegation under § 69.50.440 relating to possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, that discovers a child present at the site, shall contact the department immediately.

**Rev. Code § 9.94A.827**

The court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation, in a criminal case in which:

- The defendant has been convicted of manufacture of a controlled substance under § 69.50.401 relating to manufacture of methamphetamine; or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in § 69.50.440.
- There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person younger than age 18 was present in or upon the premises of manufacture.

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**West Virginia****W. Va. Code § 49-1-201**

'Imminent danger to the physical well-being of the child' means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when the parent, guardian, or custodian's abuse of alcohol, drugs, or other controlled substance, as defined in § 60A-1-101, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety.

**W. Va. Code § 60A-10-12**

Any person age 18 or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction, shall be confined in a State correctional facility for not less than 1 year nor more than 5 years, fined not more than \$10,000, or both.

Notwithstanding the provisions above, the penalty for a violation of said subsection when the child suffers serious bodily injury shall be confinement in a State correctional facility for not less than 3 years nor more than 15 years, a fine of not more than \$25,000, or both.

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**Wisconsin****Ann. Stat. § 48.205**

A child may be held [in physical custody] if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

An adult expectant mother of an unborn child may be held [in physical custody] if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

**Ann. Stat. § 48.02(1)**

'Abuse,' other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

- When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree
- Manufacturing methamphetamine in violation of § 961.41(1)(e) under any of the following circumstances:
  - » With a child physically present during the manufacture
  - » In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home
  - » Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child

**Wyoming****Ann. Stat. § 6-4-405**

Notwithstanding § 6-4-403(b)(iv), no person shall knowingly and willfully cause or permit any child to:

- Absorb, inhale, or otherwise ingest any amount of methamphetamine
- Remain in a room, dwelling, or vehicle where the person knows methamphetamine is being manufactured or sold
- Enter and remain in a room, dwelling, or vehicle that the person knows is being used to manufacture or store methamphetamine, or the hazardous waste created by the manufacture of methamphetamine

No person having the care or custody of a child shall knowingly and willfully permit the child to remain in a room, dwelling, or vehicle where that person knows that methamphetamine is possessed, stored, or ingested.

Any person who violates any of the provisions of the subsections above is guilty of endangering a child punishable by imprisonment for not more than 5 years, a fine of not more than \$5,000, or both.

**Ann. Stat. § 6-4-403(b)**

No person shall knowingly sell, give, or otherwise furnish a child any drug prohibited by law without a physician's prescription.

A person violating this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, a fine of not more than \$1,000, or both. A person convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not more than 5 years, a fine of not more than \$5,000, or both.



U.S. Department of Health and Human Services  
Administration for Children and Families  
Administration on Children, Youth and Families  
Children's Bureau

