



STATE STATUTES
CURRENT THROUGH JULY 2019

Parental Substance Use as Child Abuse

To find statute information for a particular State, go to the [State Statutes Search](#).

Substance use disorders—including abuse of drugs or alcohol—that affect parents and other caregivers can have negative effects on the health, safety, and well-being of children. All States, the District of Columbia, Guam, and the U.S. Virgin Islands have provisions within their child protection statutes, regulations, or policies that address the issue of substance use by parents.¹ One major area of concern is responding to the care and treatment needs of substance-exposed infants. Another major concern is addressing the harm that a child of any age can suffer when the parents' use of alcohol or other substances leads to neglect of the child or the child is exposed to illegal drug activity. For this publication, statutes, regulations, and policies regarding requirements for responding to reports of

children affected by parental substance use were collected from across all States, the District of Columbia, and the U.S. territories, and an analysis of the information informs the discussion that follows.

WHAT'S INSIDE

Substance-exposed newborns

Children exposed to parental substance use

¹ Laws in American Samoa, the Northern Mariana Islands, and Puerto Rico do not currently address the issue of children affected by parental substance use.

SUBSTANCE-EXPOSED NEWBORNS

The Child Abuse Prevention and Treatment Act requires States to operate programs relating to child abuse and neglect that include the following:

- Policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born with and identified as being affected by substance use or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder, including a requirement that health-care providers involved in the delivery or care of such infants notify the child protective services system of the occurrence of such condition in such infants²
- The development of a plan of safe care for the infant born and identified as being affected by substance use or withdrawal symptoms or fetal alcohol spectrum disorder to ensure the safety and well-being of such infant following their release from the care of health-care providers, including through addressing the health and substance use disorder treatment needs of the infant and affected family or caregiver³

The requirement to respond to the needs of substance-exposed newborns appears in the laws and policies of many States. The child abuse and neglect reporting laws in approximately 26 States and the District of Columbia specifically require health-care providers to report when they treat infants who show evidence at birth of having been exposed to drugs, alcohol, or other controlled substances.⁴ In 23 States and the District of Columbia, prenatal exposure to controlled substances is included in definitions of child abuse or neglect in civil statutes, regulations, or agency policies.⁵ Illinois, Minnesota, North Dakota, Oregon, and Wisconsin require mandated reporters to report when they suspect that pregnant women are abusing substances so that the women can be referred for treatment. In Rhode Island, a report of substance use by a pregnant woman may be made, but an investigation will be conducted only if there is an allegation of abuse and/or neglect of the newborn or other children in the home.

In many States, the actions that child welfare agencies must make in response to reports of substance-exposed infants are more focused on providing treatment and support so that the infants are able to stay with their mothers. For example, 13 States and the District of Columbia require the agency to complete an assessment of needs for the infant and for

² 42 U.S.C. § 5106a(b)(2)(B)(ii)-(iii), as amended by the Comprehensive Addiction and Recovery Act of 2016 (P.L. 114-198). 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>.

³ For more information on the requirements for plans of safe care, see the Child Welfare Information Gateway publication *Plans of Safe Care for Infants With Prenatal Substance Exposure and Their Families* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/safecare/>.

⁴ The word "approximately" is used to stress the fact that States frequently amend their laws. This information is current through July 2019. Alaska, Arizona, Arkansas, California, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Utah, Virginia, and Wisconsin have enacted specific reporting procedures for substance-exposed infants.

⁵ Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Minnesota, New Jersey, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin

the infant's family and to make a referral to appropriate services.⁶

CHILDREN EXPOSED TO PARENTAL SUBSTANCE USE

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

- Manufacturing a controlled substance in the presence of a child or on premises occupied by a child⁷
- Exposing a child to, or allowing a child to be present where, chemicals or equipment for the manufacture of controlled substances are used or stored⁸

- Selling, distributing, or giving drugs or alcohol to a child⁹
- Using a controlled substance that impairs the caregiver's ability to adequately care for the child¹⁰
- Exposing a child to the criminal sale or distribution of drugs¹¹

Approximately 33 States and the Virgin Islands address in their criminal statutes the issue of exposing children to illegal drug activity.¹² For example, in 19 States the manufacture or possession of methamphetamine in the presence of a child is a felony,¹³ while in 16 States, the manufacture or possession of any controlled substance in the presence of a child is considered a felony.¹⁴ Twelve States have enacted enhanced penalties for any conviction for the manufacture of methamphetamine when a child was on the premises where the crime occurred.¹⁵

Exposing children to the manufacture, possession, or distribution of illegal drugs is considered child endangerment in 14 States.¹⁶ The exposure of a child to drugs or drug

⁶ California, Connecticut, Delaware, Illinois, Maryland, Michigan, Minnesota, Missouri, Nevada, New Jersey, Oklahoma, Pennsylvania, and Virginia

⁷ In 13 States (Arizona, Colorado, Indiana, Iowa, Montana, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Wisconsin) and the District of Columbia

⁸ In seven States: Arizona, Arkansas, Iowa, New Mexico, North Dakota, Oklahoma, and Oregon

⁹ In seven States (Arkansas, Florida, Hawaii, Illinois, Iowa, Minnesota, and Texas) and Guam

¹⁰ In 13 States: California, Delaware, Florida, Iowa, Kentucky, Minnesota, New York, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, and West Virginia

¹¹ In five States (Iowa, Montana, Oklahoma, South Dakota, and Virginia) and the District of Columbia

¹² Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, 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.

¹³ California, Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, New Hampshire, Ohio, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wyoming

¹⁴ Alabama, Arizona, California, Colorado, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, New Mexico, North Dakota, Ohio, Oregon, and Utah

¹⁵ Arkansas, California, Hawaii, Indiana, Kansas, Mississippi, Montana, North Carolina, Ohio, Utah, Virginia, and Washington

¹⁶ Alabama, Alaska, Arizona, Delaware, Illinois, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Montana, Washington, and Wyoming

paraphernalia is a crime in eight States.¹⁷ 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.

Suggested Citation:

Child Welfare Information Gateway. (2020). *Parental substance use as child abuse*. U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau.
<https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/parentalsubstanceuse/>

¹⁷ Alabama, Arkansas, Montana, Nebraska, New Hampshire, North Dakota, South Carolina, and Utah



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



This material may be freely reproduced and distributed. However, when doing so, please credit Child Welfare Information Gateway. This publication is available online at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/parentalsubstanceuse/>.