



Bureau of Justice Assistance (BJA)

Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP)

# Substance Use and Pregnancy—Part 1:

## Current State Policies on Mandatory Reporting and Implementing Plans of Safe Care to Support Pregnant Persons With Substance Use Disorders

March 2023

### Introduction

The prevalence of substance use disorders (SUDs) and opioid use disorders (OUDs) has increased for both men and women. Research has shown that women—especially pregnant and postpartum women (PPW)—are particularly vulnerable to developing SUDs and OUDs and to having difficulty accessing appropriate OUD treatment. In 2020, the rate of SUDs increased by 24 percent for women between the ages of 18 and 25 and 11.6 percent for women 26 and older, and the rate of prescription opioid overdose deaths increased 351 percent among women from 1999 to 2019.<sup>1</sup>

In addition, the rate of infants born with Neonatal Abstinence Syndrome (NAS) has increased significantly in the last two decades. One study found that “from 2010 to 2017, the estimated NAS rate significantly increased by 3.3 per 1,000 birth hospitalizations, from 4.0 to 7.3.”<sup>2</sup> Access to appropriate and timely OUD treatment for PPW is critical to the health of both mothers and infants, but often this population faces unique challenges that are shaped by state policies and the availability of long-term recovery care support.



This brief examines policies that support or inhibit PPW’s access to long-term recovery for SUD and OUD. This article, the first in a series, reviews current federal and state policies for mandatory reporting, implications of these policies, and resources available to encourage collaboration between agencies and understand the response to their respective state policies. Subsequent articles will examine approaches to integrate treatment for SUDs into obstetrics and gynecology (OB-GYN) care and strategies for financial support of long-term recovery programs. The goal of this brief is to encourage collaboration between those

individuals involved in the criminal justice system and health care and human services providers.

## Current Federal and State Policies on Mandatory Reporting and Implementing Plans of Safe Care to Address Substance Use During Pregnancy

In many states, health care providers overseeing the care of PPW must report any suspected alcohol or drug use by their patients. These states differ in their mandatory reporting requirement policies, participating state agencies, and consequences for women who use substances during pregnancy. Depending on the state policy, mandatory reporting can be either a facilitator of or a barrier to the provision of appropriate SUD treatment for women.

### The Child Abuse Prevention and Treatment Act (CAPTA)

The Child Abuse Prevention and Treatment Act (CAPTA) was enacted in 1974 as a state grant-funding mechanism to support the prevention, assessment, and treatment of child abuse and neglect, including substance use by PPW.<sup>3</sup> CAPTA requires states to have policies and procedures in place for providers involved in the delivery or care of infants so that providers can report infant drug exposure to child protection services (CPS). States must develop a plan of safe care (POSC) for infants born and identified as being affected by substance use or withdrawal symptoms to ensure the safety of infants. In 33 states, laws and policies require the state agency to develop a POSC to address SUD treatment needs for these infants as well as for the affected parent or caregiver.<sup>4</sup> The plan must also designate a state monitoring system to oversee the implementation of safety plans. In addition, CAPTA's federal standards for mandatory notification requirements influence state-level policies. CAPTA

requires that states notify departments of CPS, which have influenced state-level policies for mandatory notification and reporting requirements.

### The Comprehensive Addiction and Recovery Act (CARA)

In 2016, the Comprehensive Addiction and Recovery Act (CARA) was passed to address the impact of the opioid epidemic on PPW, including families and infants. CARA amended the original provisions related to the POSC to include a cross-system, collaborative approach to develop the POSC in the context of the current opioid epidemic and the resurgence of methamphetamine use. The collaborative approach includes input from child welfare, SUD treatment, courts, and health care system partners to develop the POSC.<sup>5</sup> In addition, CARA amended CAPTA regarding mandatory notification requirements of providers of pregnancy and infant care that required states to define the meaning of "affected infant" and delineating the child welfare notification process to help health care providers identify which infants require a notification to CPS.<sup>6</sup> For additional information about CAPTA and CARA, please see the following resources:

- ◀ [About CAPTA: A Legislative History](#)
- ◀ [Plan of Safe Care Learning Modules: Module 1: Preparing for Plan of Safe Care Implementation](#)
- ◀ [Plans of Safe Care for Infants With Prenatal Substance Exposure and Their Families](#)

### State-level Policies

Mandatory notification and reporting policies vary by state based on whether the state has a POSC in place for CAPTA/CARA and its definition of child abuse and neglect.<sup>7</sup> Some states require reporting of suspected drug use while others require reporting and testing for drug use if it is suspected. The [Child Welfare Information Gateway: State Statutes Search](#) is a simple

tool by which users can look up state statutes for mandatory notification and reporting requirements as well as various other policies, including those concerning POSC and definitions of child abuse and neglect.

Table 1 provides example state-level policies for mandatory reporting and notification policies.

Table 1. Example State-level Policies for Mandatory Notification and Reporting

State	Policy
<b>California</b>	<p>A health practitioner or a medical social worker, prior to an infant’s release from the hospital, must perform the assessment of needs. The purpose of the assessment is to identify needed services for the mother, child, or family and the level of risk to the newborn upon release to the home. The assessment will identify the level of services and intervention necessary and may include a referral to the county welfare department for child welfare services.</p> <p>Upon receipt of a mandated report from a health care provider, the county child welfare agency must then respond in accordance with the appropriate protocols and assessments required by state regulations set forth in Division 31-100 of the Child Welfare Manual of Policies and Procedures.</p> <p>When investigating a referral, the county child welfare agency must assess and identify any safety threats to the child, including any safety threat posed by the parent’s substance use. This includes completion of a risk assessment.</p>
<b>Florida</b>	<p>Any person who knows, or has reasonable cause to suspect, that a child is neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare shall report such knowledge or suspicion to the Department of Children and Families (DCF).</p> <p>Each report of known or suspected child neglect by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare shall be made immediately to the department’s central abuse hotline. Personnel at the department’s central abuse hotline shall determine whether the report received meets the statutory definition of child abuse, abandonment, or neglect. If it is determined by a child welfare professional that a need for community services exists, the department shall refer the parent or legal custodian for appropriate voluntary community services.</p> <p>Attending health care providers are required to identify and refer all infants prenatally exposed to controlled substances and alcohol for early intervention, remediation, and prevention services.</p>
<b>Illinois</b>	<p>All persons required to report may refer to the Department of Human Services any pregnant person in the state who is addicted, as defined in the Substance Use Disorder Act.</p> <p>Current Department of Children and Family Services (DCFS) policy does not require the mandatory provision of services to substance-affected infants and their families when a report is indicated; fetal alcohol syndrome or the presence of controlled substances in the blood, urine, or meconium of the infant is the only allegation present; and temporary protective custody of the substance-affected infant has not been taken. However, statistics indicate that nearly one-third of substance-affected infants will be neglected within the first year of their lives. Therefore, a more aggressive approach will be taken by DCFS in the investigation, assessment, and provision of services to families with an indicated report involving infants who are born with fetal alcohol syndrome or controlled substances in their systems.</p>
<b>Massachusetts</b>	<p>A mandated reporter who, in their professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from physical dependence upon an addictive drug at birth shall immediately communicate with DCF orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect.</p>
<b>Utah</b>	<p>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.</p>

## Mandatory Notification and Reporting Policies

Mandatory notification and reporting policies are important for protecting the health of infants and their caregivers, especially when the mother is unwilling to seek treatment for SUD. Mandatory notification and reporting can help prevent long-term impacts of substance use during pregnancy, including infant withdrawal from substances, neonatal alcohol syndrome, and financial burdens of treating infants born with drug addictions. Mandatory notification and reporting can also help facilitate quicker access to SUD treatment for PPW, depending on the state policy.<sup>8</sup> As the goal is to keep the family unit together, access to appropriate and affordable SUD treatment is critical for women to keep custody of their children. With CAPTA and CARA, states are also able to access additional funding to provide SUD treatment to PPW at minimal cost. As demonstrated in table 1, some states have leveraged the requirement for safe plans under CAPTA and CARA in order to prioritize SUD treatment for pregnant women, create specialized programs for them, and protect them from discrimination in SUD treatment.

### Distinguishing Between a Notification and a Report

As discussed above, CAPTA includes a requirement for the notification of CPS if the health care provider identifies infants affected by substance use or withdrawal symptoms but does not define child abuse or neglect under federal law.<sup>9</sup> By not including a definition of child abuse or neglect, CAPTA recognizes that some infants are not necessarily at risk of child abuse or neglect and may not require a report to CPS. This distinction is important, since a notification is intended to initiate a POSC, whereas a report to CPS triggers the possibility to screen, assess, or investigate the incident. Notification allows time to plan how to address affected infants, with the intent

to keep the family unit together, whereas reports can lead to a child protection investigation or an in-depth assessment process.<sup>10</sup>

For more information, please see the following resources:

- ◀ [How States Serve Infants and Their Families Affected by Prenatal Substance Exposure: Brief 1: Identification and Notification](#)
- ◀ [Learning Exchange: Brief 1: Identification and Notification](#)
- ◀ [Plan of Safe Care Learning Modules: Module 3: Determining Who Needs a Plan of Safe Care](#)

### Implications of Mandatory Notification and Reporting Policies

As demonstrated in table 1, the implications of mandatory reporting requirements depend on the state policy. Mandatory notification and reporting requirements are meant to identify and prevent the potential health issues resulting from infant alcohol and drug exposure, but such requirements can stigmatize substance use during pregnancy if providers are not properly trained to screen women for SUD and refer them to the appropriate treatment. Research has shown that women in general tend to be less forthcoming about their substance use because SUD in women is stigmatized, and this fear is amplified for PPW.<sup>11</sup> For example, one study found that women who had SUD did not trust health care providers to protect them from the social and legal consequences of substance use during pregnancy and they thus avoided discussing their substance use at all.<sup>12</sup> Furthermore, mandatory notification and reporting is only the first step in a process; the subsequent actions required in the policies may further discourage pregnant women from being candid about their substance use. Finally, in states that consider substance use during pregnancy to be child abuse and possible grounds for civil commitment, women can

face termination of parental rights, forced admission to an inpatient treatment program and, in the most severe cases, incarceration.

## Benefits of Early Identification

While mandatory notification and reporting policies can have unintended consequences, early identification of substance use during pregnancy can prevent long-term health issues for the infant and the mother. In addition, early identification can support infants' prospects for returning home, as women can receive family support before removal. As mentioned previously, providers must be properly trained to screen women for SUD and be cognizant of nearby SUD treatment options for referral. The National Center on Substance Abuse and Child Welfare and the American College of Obstetricians and Gynecologists recommend that providers verbally screen all women; ideally, screening would occur during each trimester with an evidence-based screen tool such as the Screening, Brief Intervention, and Referral to Treatment (SBIRT) tool. By using universal screening in early identification, providers can reduce the impact of stigmatization and bias, as well as better identify women who need access to services. The next brief in this series will provide more details about early identification and referral to SUD treatment from the OB-GYN provider.<sup>13</sup>

## Recommendations

States and local entities can advance standards of care for PPW and their children by educating health care providers on mandatory reporting policies and subsequent actions required in each state through cross-agency collaboration.

## Research and Know State Policies

Begin by researching your state's policies regarding substance use by PPW, specifically for their POSC (if any), notifications, and reports. Use the preliminary

information provided in this brief and visit the state's website to obtain the exact policy language. Understanding the state's policy and POSC will help you know how the state responds to substance use by PPW and what requirements health care providers must meet. The implications of mandatory reporting requirements will differ from one state to another. In addition, research the notification pathways, as outlined in the various resources in this brief, and the differences among state and county child welfare systems, as these may differ based on the POSC and the notification pathway. Equip and educate state and local agencies on those implications and nuances.

After researching an individual state's policies, search for case studies or peer-reviewed articles about the policies' practical implications. For states with more punitive policies, for example, research court decisions to understand how the criminal justice system responds to substance use during pregnancy. For states with targeted or prioritized SUD treatment policies for PPW, research targeted programs for this population or identify studies focused on the screening and referrals of pregnant women to prioritize them for SUD treatment. Understanding the landscape and implications of mandatory reporting requirements is the first key step in developing partnerships between state and local entities and creating resources for them.

## Develop Resources to Help Create Pathways to Engage Pregnant and Parenting Women in Services and Supports to Prevent Child Welfare Involvement

Once a firm understanding of a state's policies regarding substance use during pregnancy is established, it is important to disseminate the information to state and local entities to help providers navigate suspected and confirmed substance use during pregnancy. Diversifying the types of resources



### Examples of Resources to Develop

- ◀ Tip sheets about state-specific policies regarding substance use during pregnancy and local SUD treatments that provide specific treatment to PPW with SUD
- ◀ Webinars about the importance and implications of understanding mandatory notification and reporting policies

will help provide a clear understanding of the implications of the state policy and means by which state and local entities can address substance use during pregnancy.

In addition, cross-collaboration and partnering with other family-based agencies are key to supporting PPW. This collaboration can include home visitors, SUD/medication-assisted treatment providers, state and local public health and safety agencies, child welfare, etc. This collaboration better serves families and outcomes for families. You can learn more about cross-collaboration across agencies in this resource: [Building Collaborative Capacity](#).

### Summary

Mandatory reporting requirements can be critical for the health of PPW and their infants. However, state-level policies may either facilitate or create barriers to women's accessing appropriate SUD treatment. Pregnant women may be afraid to be forthcoming about substance use because of stigma or punitive policies if their substance use is confirmed. As such, collaboration among various agencies has an important role not only in educating state and local

entities about state policies regarding substance use during pregnancy, but also in disseminating information about local SUD treatment to PPW with SUDs.

### Endnotes

1. National Institute on Drug Abuse. (2020, March 10). *Drug Overdose Death Rates*. <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>.
2. Hirai, A. H., et al. (2021, January 12). "Neonatal Abstinence Syndrome and Maternal Opioid-related Diagnoses in the US, 2010–2017." *JAMA* 325(2): 146–155. <https://doi.org/10.1001/jama.2020.24991>.
3. National Center on Substance Abuse and Child Welfare. (2017). *Child Abuse and Prevention Treatment Act (CAPTA) Substance Exposed Infants Statutory Summary*. Substance Abuse and Mental Health Services Administration and the Administration on Children, Youth and Families, Children's Bureau. [https://ncsacw.acf.hhs.gov/files/CAPTA\\_SEI\\_Statutory\\_Summary.pdf](https://ncsacw.acf.hhs.gov/files/CAPTA_SEI_Statutory_Summary.pdf).
4. Child Welfare Information Gateway. (n.d.). *Plans of Safe Care for Infants With Prenatal Substance Exposure and Their Families*. <https://www.childwelfare.gov/pubPDFs/safecare.pdf>.
5. National Center on Substance Abuse and Child Welfare. (2020, July). *Plan of Safe Care Learning Modules: Module 1: Preparing for Plan of Safe Care Implementation*. <https://ncsacw.acf.hhs.gov/files/posc-module-1.pdf>.
6. U.S. Government Printing Office. (2016). Comprehensive Addiction and Recovery Act of 2016, Pub. L. No. 114-198, 114 Stat. 1221. <https://www.govinfo.gov/app/details/PLAW-114publ198>.
7. Children and Family Futures. (n.d.). *Case Law Review—Prenatal Substance Exposure*. [https://www.cffutures.org/home-page/qic-ccct\\_caselawbrief/](https://www.cffutures.org/home-page/qic-ccct_caselawbrief/).

8. Seibert, J., et al. (2019, February 21). *State Policy Levers for Expanding Family-centered Medication-assisted Treatment*. Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services.

9. National Center on Substance Abuse and Child Welfare. (n.d.). *How States Serve Infants and Their Families Affected by Prenatal Substance Exposure: Brief 1: Identification and Notification*. <https://ncsacw.acf.hhs.gov/files/prenatal-substance-exposure-brief1.pdf>.

10. National Center on Substance Abuse and Child Welfare. (2020). *Plan of Safe Care Learning Modules: Module 3: Determining Who Needs a Plan of Safe Care*. <https://ncsacw.acf.hhs.gov/files/posc-module-3.pdf>.

11. Committee on Health Care for Underserved Women, and The American College of Obstetricians and Gynecologists. (2011, January). "Committee Opinion No. 473: Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician–Gynecologist." *Obstetrics and Gynecology* 117(1): 200–201. <https://doi.org/10.1097/AOG.0b013e31820a6216>.

12. Roberts, S., and A. Nuru-Jeter. (2010, May). "Women's Perspectives on Screening for Alcohol and Drug Use in Prenatal Care." *Women's Health Issues* 20(3): 193–200. <https://doi.org/10.1016/j.whi.2010.02.003>.

13. See note 10 above, National Center on Substance Abuse and Child Welfare, *Plan of Safe Care Learning Modules: Module 3: Determining Who Needs a Plan of Safe Care*.

Visit the COSSAP Resource Center at [www.cossapresources.org](http://www.cossapresources.org).

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This project is supported by Grant No. 15PBJA-21-GK-01074-MUMU awarded by the Bureau of Justice Assistance (BJA). BJA is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART). Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.