

Substance Abuse During Pregnancy

BACKGROUND: Since the late 1980s, policymakers have debated the question of how society should deal with the problem of women's substance abuse during pregnancy. No state specifically criminalizes drug use during pregnancy. However, prosecutors have attempted to rely on a host of criminal laws already on the books to attack prenatal substance abuse. Only the South Carolina Supreme Court has upheld such a conviction, ruling in *Whitner v State* that a woman's substance abuse late in pregnancy constitutes criminal child abuse. Meanwhile, several states have expanded their civil child-welfare requirements to include prenatal substance abuse, so that prenatal drug exposure can provide grounds for terminating parental rights because of child abuse or neglect. Further, some states, under the rubric of protecting the fetus, authorize civil commitment (such as forced admission to an inpatient treatment program) of pregnant women who use drugs; these policies sometimes also apply to alcohol use or other behaviors. A number of states require health care professionals to report or test for prenatal drug exposure, which can be used as evidence in child-welfare proceedings. And in order to receive federal child abuse prevention funds, states must require health care providers to notify child protective services when the provider cares for an infant affected by illegal substance abuse. Finally, a number of states have placed a priority on making drug treatment more readily available to pregnant women.

HIGHLIGHTS:

- 15 states consider substance abuse during pregnancy to be child abuse under civil child-welfare statutes, and 3 consider it grounds for civil commitment.
- 14 states require health care professionals to report suspected prenatal drug abuse, and 4 states require them to test for prenatal drug exposure if they suspect abuse.
- 19 states have either created or funded drug treatment programs specifically targeted to pregnant women, and 9 provide pregnant women with priority access to state-funded drug treatment programs.
- 4 states prohibit publicly funded drug treatment programs from discriminating against pregnant women.



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CONTINUED

STATE POLICIES ON SUBSTANCE ABUSE DURING PREGNANCY

STATE	SUBSTANCE ABUSE DURING PREGNANCY CONSIDERED:		WHEN ABUSE SUSPECTED, STATE REQUIRES:		DRUG TREATMENT FOR PREGNANT WOMEN		
	Child Abuse	Grounds for Civil Commitment	Reporting	Testing	Targeted Program Created	Pregnant Women Given Priority Access in General Programs	Pregnant Women Protected from Discrimination in Publicly Funded Programs
Alaska			X				
Arizona			X			X	
Arkansas	X				X		
California					X		
Colorado	X				X		
Connecticut					X		
Florida	X				X		
Georgia						X	
Illinois	X		X		X		
Indiana	X						
Iowa	X		X	X			X
Kansas						X	X
Kentucky				X	X		
Louisiana	X		X		X		
Maryland					X	X	
Massachusetts			X				
Michigan			X				
Minnesota	X	X	X	X	X		
Missouri					X	X ^Ω	X
Montana			X				
Nebraska					X [†]		
Nevada	X						
New York					X		
North Carolina					X		
North Dakota			X	X			
Ohio					X		
Oklahoma	♦		X			X	X
Oregon					X [‡]		
Pennsylvania					X		
Rhode Island	X		X				
South Carolina	X*						
South Dakota	X	X					
Texas	X					X	
Utah			X			X	
Virginia	X		X		X		
Washington					X		
Wisconsin	X	X				X	
TOTAL	15	3	14	4	19	9	4

♦ New Oklahoma law goes into effect later in 2012.

* The South Carolina Supreme Court held that a viable fetus is a “person” under the state’s criminal child-endangerment statute and that “maternal acts endangering or likely to endanger the life, comfort, or health of a viable fetus” constitute criminal child abuse.

† Applies only to women and newborns eligible for Medicaid.

‡ Establishes requirements for health care providers to encourage and facilitate drug counseling.

Ω Priority applies to pregnant women referred for treatment.

FOR MORE INFORMATION:

For information on state legislative and policy activity, click on Guttmacher’s [Monthly State Update](#), for state-level policy information see Guttmacher’s [State Policies in Brief](#) series, and for information and data on reproductive health issues, go to Guttmacher’s [State Center](#). To see state-specific reproductive health information go to Guttmacher’s [Data Center](#), and for abortion specific information click on [State Facts About Abortion](#). To keep up with new state relevant data and analysis sign up for the [State News Quarterly Listserv](#).

Dailard C and Nash E, [State responses to substance abuse among pregnant women](#), *The Guttmacher Report on Public Policy*, 2000, 3(6):3–6.

Figdor E and Kaeser L, [Concerns mount over punitive approaches to substance abuse among pregnant women](#), *The Guttmacher Report on Public Policy*, 1998, 1(5):3–5.