

State Legislation on Substance Use During Pregnancy

A Self-Study Guide

How to Use this Self-Study Guide

Review this guide to deepen your understanding of state laws and policies that establish legal consequences for women who use substances during pregnancy. The legislative definition of “substances” varies among states. For the purposes of this study guide, “substances” refers to recreational substances (e.g. alcohol and tobacco), prescribed substances (e.g. pain medication including opiates and methadone), and illicit substances (e.g. marijuana*, heroin, methamphetamines, and cocaine).

This guide will enable you to:

- Increase your understanding of the implications of laws and policies that target substance use during pregnancy.
- Familiarize yourself with where your state stands on key policy issues related to substance use during pregnancy.
- Learn and customize talking points that you can use to communicate the implications of these laws and policies to your program staff, partners, and stakeholders.

Before You Begin

Consider viewing the following webinar for a foundational synopsis of the history and implications of legislation that targets substance use during pregnancy. You can access the webinar recording, slides, and corresponding transcript with the link below.

[Ask the Expert: Criminalization and Legal Implications of Substance Use During Pregnancy](#). Webinar created by the Healthy Start EPIC Center in collaboration with National Advocates for Pregnant Women (NAPW). Recorded on April 26, 2018. [1:55:15]

Additional resources are available for download as you move through this guide.

*Note: There is variation in how states classify marijuana. While marijuana laws continue to change rapidly in many states, a majority of states still consider marijuana an illicit drug.

The Implications of Policies on Substance Use During Pregnancy

While policies that create legal consequences for women who use substances during pregnancy are implemented with the intent of promoting maternal and infant well-being, their consequences are often harmful to women and their families. These consequences can include incarceration, forced enrollment in substance use treatment programs, drug testing by providers without a woman's permission, and removal of children from a mother's care. The evidence indicates that these policies can also lead to a host of negative health-related outcomes for women and their children.

In [Women Who Use Drugs in the USA](#), researchers from Amnesty International explore the experiences of women impacted by legal consequences of policies (with a focus on policies in Alabama and Tennessee) as well as the perspectives of healthcare providers, law enforcement officials, and non-governmental organizations engaged with the issue. This report found that:

- The threat of criminal punishment for substance use during pregnancy **deters women** from seeking health care, prenatal care, and treatment for substance use.
- Fear of punishment **erodes women's trust** in healthcare providers.
- Women **do not always know they are being tested** for substance use by their providers nor give their consent to testing.
- States that implement penalizing policies do not always provide access to affordable substance use care, **limiting available treatment options**.
- Laws that punish or indirectly discriminate against pregnant women are often **disproportionately enforced** against low-income women and women of color.

Public health experts have found that policies establishing legal consequences for pregnant women discourage treatment and care seeking when they are not coupled with ample opportunities for treatment and support. For example, in [Evidence from a national treatment database](#), Kozhimannil et al. examine state-level prenatal substance use policies and their effects on admissions to substance use disorder treatment among pregnant women. This study found that:

- States that enacted **only criminal justice policies** saw a decline in substance use treatment admissions among pregnant women. This may be because women are more likely to withhold information about their substance use when no treatment options are available.
- States that adopted **multiple policies** such as providing treatment and support, clinician reporting requirements, and criminal justice policies experienced an increase in substance use treatment admissions among pregnant women.
- Note: As of April 2019, this article is not yet available for free download. Please review [Examining Prenatal Substance Use Policies and Their Impact on Pregnant Women's Likelihood of Getting Treatment](#) from the University of Maryland School of Public Health for a detailed summary.

For a more comprehensive overview of the current research and policy implications related to substance use and substance use disorders among pregnant and parenting women please review [Substance Use: Overview of Research and Policy in the United States](#), from the Jacob's Institute of Women's Health Bridging the Divide Project (February 2017).

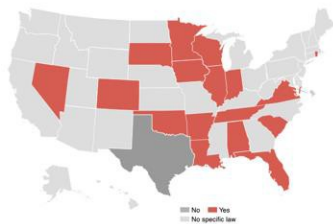
Understanding How States Navigate Substance Use During Pregnancy

States address substance use during pregnancy in different ways. Check out the following two resources to find out more about laws and policies in your state:

1. The Guttmacher Institute regularly updates [its state-by-state breakdown](#) of policies related to substance use during pregnancy. Review the table to learn about policies that are currently active in your state.



2. ProPublica developed [an interactive map](#) outlining the presence of state laws related to substance use and pregnancy across the country. Review this map to learn which states:



- Have ever prosecuted women for substance use during pregnancy
- Consider substance use during pregnancy a crime
- Consider substance use during pregnancy child abuse
- Consider substance use during pregnancy grounds for civil commitment
- Require healthcare workers to report patients' substance use during pregnancy
- Require testing if substance use during pregnancy is suspected

Your State Snapshot: As you review these resources, complete the following table to create a snapshot of which policies are currently active in your state. Check each item that applies to your state.

Snapshot of Policies Around Substance Use During Pregnancy in: _____

State Policy in Place

Substance use during pregnancy is considered child abuse.

Healthcare providers are required to report diagnosed or suspected substance use during pregnancy.

My state has created a targeted program to treat substance use among pregnant women.

My state protects pregnant women from discrimination in publicly funded programs.

Talking Points to Use When Discussing the Legal Implications of Substance Use During Pregnancy

The following talking points have been drawn from a resource prepared by the American College of Obstetricians and Gynecologists (ACOG). Review, customize, and practice them for when you need to clearly and briefly explain the impacts of policies that penalize pregnant women for substance use. See the [ACOG toolkit on *Pregnant women and prescription drug abuse, dependence and addiction*](#) for additional points and research that you can use to convey policy impacts.

- **Healthy mothers and babies are our common goal.** Drug and alcohol use is a health issue that deserves more attention. For pregnant women who misuse drugs and alcohol, including opiate painkillers, our shared goal must be a healthy outcome for both mother and baby.
- **Health experts agree that substance use during pregnancy is best addressed through harm reduction and treatment.** Every leading medical and public health organization that has addressed this issue has concluded that education, prevention, and community-based treatment are the best methods for reducing substance use during pregnancy.[†]
- **Staying connected to the healthcare system is key to improving birth outcomes.** The evidence shows that getting prenatal care, staying connected to the healthcare system, and maintaining open communication channels with physicians and healthcare providers about substance use helps improve birth outcomes, regardless of whether a woman can successfully stop using substances.
- **Policies that penalize pregnant or parenting women for substance use leads to adverse consequences for both mother and baby.** Research shows that state laws and policies that penalize women for substance use during pregnancy lead to a host of negative consequences including:
 - Deterring women from seeking the care they need to reduce their substance use.
 - Discouraging women from disclosing substance use to healthcare providers who could help them access treatment and care.
 - Pressuring women to end their pregnancies in order to avoid arrest if they do not feel they can successfully stop using substances.
 - Limiting health care providers' ability to provide the best possible care to women, including providing appropriate treatment for pain or substance use disorders.

[†] These organizations include the American Medical Association, American College of Obstetricians and Gynecologists, American College of Nurse-Midwives, American Academy of Pediatrics, American Public Health Association, American Academy of Family Physicians, American Society of Addiction Medicine, and March of Dimes.



“Is This What Justice Looks Like?” A Case Study

In addition to research-based talking points, stories are a powerful tool to help listeners visualize the real impacts of any policy. Take five minutes to review Ann’s story featured in *The New Social Worker* article “[The Criminalization of Addiction in Pregnancy: Is This What Justice Looks Like?](#)” (2017). Once you have read through this case study, spend a few minutes reflecting on the following questions.

1. **What barriers did Ann face to seeking appropriate treatment for her substance use once she found out she was pregnant?**
 - How did this affect her prenatal care?

2. **What could have gone differently in Ann’s interactions with the healthcare system that would have helped her better connect to care?**
 - What about her interactions with healthcare providers?

3. **How did state-level policies influence the care Ann received?**

4. **How might you incorporate aspects of Ann’s story – or your own clients— when discussing the impacts of these policies?**

Identifying Substance Use Reduction Strategies that Work

Health experts agree that addressing substance use during pregnancy is important. However, not all strategies intended to reduce substance use during pregnancy successfully promote healthy outcomes for mothers and babies. Review the following table to learn what strategies do and do not support healthy outcomes.

Reprinted with ACOG’s permission from their toolkit on Pregnant women and prescription drug abuse, dependence and addiction. Content has been lightly modified from its original source to promote readability.

Strategies that DO NOT SUPPORT Healthy Outcomes	Strategies that SUPPORT Healthy Outcomes
Overtreatment of Neonatal Abstinence Syndrome (NAS)	Appropriate comfort care in low-stimuli environment and pharmacological therapy where indicated
Criminal penalties for women and doctors	Public health approaches focused on prevention and treatment
Mandatory urine testing	Screening dialogue/questionnaire with patient consent
Mandatory reporting to law enforcement or child protective services (CPS)	Statistical reporting to department of health or direct reporting to Child Protective Services (CPS) only for actual indications of impaired parenting
Overreliance on fragmented prescription drug monitoring programs (PDMPs)	Safe prescribing and initial check of prescription drug monitoring programs (PDMPs)
Punitive drug treatment courts	Family-centered drug treatment programs
Restrictions on medication access and forced withdrawal	Opioid Agonist Treatment (OAT) with methadone or buprenorphine for women and protections for treating physicians
Misleading drug prescribing warnings	Evidence-based labeling of opioid medications
“Anti-family”, one-size-fits-all drug treatment programs	Family-centered, community-based, outpatient treatment
Coercive referrals for fertility control	Counseling on pregnancy planning, prevention and contraception
Losing sight of the real harms of alcohol and cigarette use during pregnancy	Continued focus on the greatest preventable health threats – alcohol and tobacco use during pregnancy

Reflecting on Next Steps

Take five minutes to reflect, by yourself or with your colleagues, on the findings that emerged as you reviewed this guide. If helpful, answer the following questions.

- 1. How did reviewing the policies that are currently in place in your state change or confirm your beliefs regarding your state's approach to addressing substance use during pregnancy?**
- 2. What were the two most surprising things that you learned from reviewing this guide?**
- 3. What are three ways you can start shifting conversations around substance use during pregnancy and related policies in your community?**
 - In media coverage?
 - In research?
 - Among providers that serve your clients?

Acknowledgements:

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