

# Prenatal Drug Exposure: CAPTA Reporting Requirements for Medical Professionals<sup>1</sup>

**Note:** This resource is up to date as of February 2024.

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## Why use this fact sheet?

As medical professionals who work with pregnant patients, you face numerous medical, legal, and ethical decision points when treating a patient for substance use during pregnancy, and when providing care to a neonate with drug or alcohol exposure. Sometimes, the legal requirements for reporting substance use or exposure are unclear, or may be the opposite of medical best practice. Moreover, patient privacy dictates careful attention to the law to avoid unnecessary reports that may lead to HIPAA violations. This resource provides a brief summary of reporting requirements by state for prenatal drug use and substance-exposed newborns and provides explanations of the wording used in these requirements. **This resource does not provide legal or medical advice** but is intended to help you differentiate what is legally required from what is merely state agency guidance. Importantly, **only two states require drug testing of pregnant and birthing patients in certain circumstances<sup>2</sup>**, and **only four states mandate drug testing of newborns in certain circumstances<sup>3</sup>**.

Your hospital, clinic, or practice may have additional reporting requirements that you should be familiar with. Providers can help patients maintain their agency and confidentiality while navigating reporting obligations by:

- Not reporting patients if not legally required
- Informing patients of what the provider may have to report prior to testing/treating the patient or neonate
- Obtaining informed and documented consent around parental and neonatal drug testing
- Carefully considering what information is necessary to document in a medical chart

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**Reporting a patient, even with the hope of connecting the family to resources, often leads to more harm.**

Providers can also help protect their patients from unjust criminalization by ensuring that their hospital or clinic reporting policies do not conflict with state laws on medical privacy. If you have any additional questions about state reporting requirements, please contact If/When/How for technical assistance at [tinyurl.com/IWHTechnicalAssistance](https://tinyurl.com/IWHTechnicalAssistance). For continuing education on the updated science and laws around prenatal substance use, as well as the opportunity to hear from directly impacted parents, check out the [Doing Right at Birth webinar series](#).

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### **Who wrote this guide and why?**

If/When/How: Lawyering for Reproductive Justice is a legal advocacy organization. We created this fact sheet because one of the most common causes of the criminalization of pregnant and postpartum people is unnecessary reports to law enforcement or child protective services by medical providers. We often field questions from providers with concerns about if or when they are required to report substance exposure during pregnancy, especially as more providers see the harms of the child welfare system (“the family policing system”) firsthand.

Reporting a patient, even with the hope of connecting the family to resources, often leads to more harm. Reporting is not resourcing, and not all—or even most—families will get the resources they need as a result of a report to the family policing system.<sup>4</sup> This guide helps you understand the reporting laws in your state.

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### **What is CAPTA and what does it require?**

The Child Abuse Prevention and Treatment Act (CAPTA) is federal legislation that requires states to create laws that mandate certain professionals to report child abuse or neglect (suspected or actual) to a child protective services agency. Subsequent additions to the legislation, from the Comprehensive Addiction and Recovery Act (CARA), also require medical professionals to notify child protective agencies when an infant is born substance-affected.

States implement their own reporting requirements to comply with CAPTA. Those requirements vary from state to state, including definitions for who is a mandated reporter, what constitutes reportable child abuse or neglect, and when medical professionals have to report suspected or actual prenatal drug exposure. State policies vary, but the general requirement is that **all substance-affected newborns must be provided with a Plan of Safe Care (POSC), and all POSCs must be shared with the state child welfare agency**. A POSC is different from a child protective services report, and is determined by medical professionals based on how best to address the health and development needs of the infant and birthing parent.

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**Have more questions? Reach out to request technical assistance.**

**Sharing a POSC with the state agency charged with accepting child abuse and neglect complaints is NOT a report of child abuse or neglect, but rather is a notification to the agency that a POSC exists.** Some states even allow a de-identified POSC to satisfy CAPTA's data reporting requirements while avoiding unnecessary state intervention. The state laws detailed below determine whether the presence of substances in a newborn, or the diagnosis of certain conditions, requires a child abuse or neglect report in addition to a POSC.

It's worth noting that state agencies charged with accepting child abuse and neglect reports sometimes develop their own policies and guidance for when a report is required. Some guidance directly follows state law, but other guidance is based on that agency's interpretation of how state law should be implemented. **This agency guidance is not legally binding when it goes beyond the requirements of state law**, but should be taken into consideration when deciding whether or not to make a report. Attorneys can help you determine whether your state agency's issued guidance encourages overreporting. Additionally, some hospital or clinic institutional policies may actually require reporting in more cases than indicated by your state laws below.<sup>5</sup> If the institutional policy encourages overreporting, or "just to be safe" reporting that isn't required by law, providers may decide to engage in intra-institutional advocacy to change their policies. If/When/How may be able to support you in this advocacy.

#### **Important notes on how to use this fact sheet**

- Many state and hospital policies require mandatory reporters to notify the state "child protective services" department in certain circumstances involving prenatal substance use, including when creating a POSC. This is **NOT** a report of child abuse or neglect unless otherwise indicated in your state's conclusions below.
- **This fact sheet does not cover general child abuse or neglect reporting statutes** unless they directly address prenatal substance use or substance-affected newborns. While we firmly believe a drug test is not a parenting test, this fact sheet explains the laws in each state.
- Some states may require a verbal drug screening for pregnant patients. These laws are not included below as this resource focuses on drug test and substance use/exposure reports. When we use the term "drug test" we are referring to a scientific method of measuring the presence of drugs in the body.
- Some states require a blood test for a newborn for the purpose of screening for disease. Sometimes, these tests can be refused by a parent. **These screening tests are not included in this fact sheet.**
- Young people under 18 who are pregnant, using substances, and still under the care of a parent or guardian ("unemancipated") may trigger child abuse reporting statutes in certain circumstances. **Reach out to If/When/How's technical assistance providers** if you have questions about caring for unemancipated young people under 18.

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- Many laws and regulations use something called “the reasonable person standard.” Where this standard applies to medical professionals it is asking the question, “what would a reasonable medical provider, who has the same knowledge base and expertise as you, do in this scenario?” It is a highly imperfect attempt at objectivity. Medical providers who need further guidance on how to adhere to this standard can **contact If/When/How’s technical assistance providers.**

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### Alabama<sup>6</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test of a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a child abuse or neglect report is **NOT** required by state law.<sup>7</sup>

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### Alaska<sup>8</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A provider involved in the delivery or care of an infant who the provider “determines has been adversely affected by, or is withdrawing from exposure to, a controlled substance or alcohol shall immediately notify the [Department of Family and Community Services] of the infant’s condition.”<sup>9</sup>  
This is not a child abuse or neglect report.
  - A provider is **NOT** required to make a report if the presence of the drug is the result of medical treatment for the newborn or birthing parent, so it would not include medicines like buprenorphine for opioid use disorder treatment if taken as recommended.

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## Arizona<sup>10</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A report is **NOT** required solely because a newborn tests positive for “alcohol or a drug listed in section 13-3401.”<sup>11</sup>
- A report is required only if the health care provider reasonably believes that the newborn may be affected (not simply exposed, but medically impacted) by the presence of alcohol or a drug listed in section 13-3401.
  - This does not apply if the presence of the drug is the result of medical treatment for the newborn or birthing parent, so it would not include medicines like buprenorphine for opioid use disorder treatment if taken as recommended.<sup>12</sup>
  - This does apply to newborns medically impacted by cannabis use.<sup>13</sup>

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## Arkansas<sup>14</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test from either parent or infant does trigger a mandatory report to the Division of Child and Family Services (DCFS).<sup>15</sup>

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## California<sup>16</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a child abuse report is **NOT** required.
- In California, the results of a toxicology test alone do not require a report of abuse/neglect, but “[i]f other factors are present that indicate risk to a child, “a provider **must** report to the California Department of Social Services.<sup>17</sup>

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## Colorado<sup>18</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, they are required to report only if:
  - The “child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health care provider, **and**
  - [T]he newborn child's health or welfare is threatened by substance use.”<sup>19</sup>
  - Colorado does not further define “substance exposure” in statute. However, other mentions in Colorado statute of perinatal substance exposure refer to “controlled substances[,]”<sup>20</sup> indicating that the state likely only considers a positive drug test of a newborn for “controlled substances” to trigger a report. That list of substances **does include** cannabis, but **does not include** substance use disorder medications like buprenorphine when taken as prescribed by a licensed health care provider.<sup>21</sup>

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## Connecticut<sup>22</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indication that a newborn is substance-affected does **NOT** trigger a mandatory report.
  - Providers must make a CAPTA notification through an online portal for any newborn known to be exposed to substances during pregnancy. If there are no safety concerns, this information is anonymized and does NOT equate to a DCF referral.<sup>23</sup>

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## Delaware<sup>24</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- According to The Division of Family Services (DFS) all birthing hospitals in the state do universal testing at labor and delivery with informed consent from the pregnant person.
  - If a provider involved in the delivery or care of an infant identifies that infant as being affected by substance abuse, withdrawal, or FASD, Delaware law **mandates a notification** to DFS.<sup>25</sup> This is not a child abuse or neglect report.
  - This **does not apply** if the presence of the drug is the result of medical treatment for the newborn or birthing parent, so it would not include medicines like buprenorphine for opioid use disorder treatment or medical marijuana if taken as recommended.<sup>26</sup>

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## Florida<sup>27</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive for alcohol or controlled substances, the provider **must** report to the Florida Department of Children and Families.<sup>28</sup>
  - A report is **NOT** required for prescribed opioid use disorder treatment such as methadone or buprenorphine.
  - A report is **NOT** required for prescription cannabis.

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## Georgia<sup>29</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a child abuse report to the Division of Family and Children Services **is required** by state law. A report **is also required** if an infant displays effects of withdrawal or there are “medically diagnosed and harmful effects in a newborn’s physical appearance or functioning.”<sup>30</sup>
  - This **does not apply** if the presence of the drug is the result of medical treatment for the newborn or birthing parent, so it would not include medicines like buprenorphine for opioid use disorder treatment if taken as recommended.
  - This **does not apply** to newborns medically impacted by cannabis use.<sup>31</sup>

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## Hawai’i<sup>32</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indications a newborn is substance-affected does **NOT** trigger a mandatory report.

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## Idaho<sup>33</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indication that a newborn is substance-affected does **NOT** trigger a mandatory report.



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## Illinois<sup>34</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.<sup>35</sup>
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested, and their “blood, urine, or meconium contains any amount of a controlled substance . . . or a metabolite of a controlled substance,” mandatory reporters **must** report the positive test to the Illinois Department of Children and Families unless it is the result of medical treatment for the newborn or birthing parent.<sup>36</sup>
  - Note that “a diagnosis of Fetal Alcohol Syndrome or drug withdrawal at birth caused by the [parent]’s addiction” constitutes neglect under Illinois law and requires a report.<sup>37</sup>
  - The presence of substance use disorder medications (like methadone or buprenorphine when taken as prescribed by a licensed health care provider) does **NOT** require a neglect report.<sup>38</sup>
  - Cannabis is **NOT** a controlled substance in Illinois law, and thus does **NOT** require a neglect report.

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## Indiana<sup>39</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a report<sup>40</sup> to the Department of Child Services is **NOT** required by law, unless the newborn needs care that they are not getting or are unlikely to get without court involvement.
  - This **does not apply** if the presence of the drug is the result of medical treatment for the newborn or birthing parent, so it would not include medicines like buprenorphine for opioid use disorder treatment if taken as recommended.<sup>41</sup>
- Under DCS child welfare policy,<sup>42</sup> substance use alone does not indicate child abuse or neglect.

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## Iowa<sup>43</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, the provider must report to the Iowa Department of Health & Human Services.<sup>44</sup>
  - This **does not** include a positive test for prescribed medications, like methadone or buprenorphine.
  - This **does not** include a positive test for prescription medical cannabis.
- If a mandated reporter “involved in the delivery or care of a newborn or infant discovers...physical or behavioral symptoms that are consistent with the effects of prenatal drug exposure or a fetal alcohol spectrum disorder,” the provider **must** report to the Iowa Department of Health & Human Services.<sup>45</sup>
  - Though Iowa law is unclear on this point, symptoms of prescribed medication exposure, such as methadone or medical marijuana, likely do not trigger a report.

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## Kansas<sup>46</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indications that newborn is substance-affected does **NOT**, on its own, trigger a child abuse or neglect report.<sup>47</sup>

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## Kentucky<sup>48</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
  - Providers may **NOT** drug test the pregnant person without first informing them about the purpose of the testing.<sup>49</sup>
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a child abuse or neglect report is **NOT** required unless there is finding that the infant is harmed or could be harmed because “the parent engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child.”<sup>50</sup>
  - Reporting is not required for use of medicinal cannabis, which is not a controlled substance in Kentucky.<sup>51</sup>

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## Louisiana<sup>52</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test of a newborn is required **only if** the provider “**has cause to believe** that a newborn was exposed in utero to an unlawfully used controlled dangerous substance.”<sup>53</sup>
- A child abuse report to the Louisiana Department of Children and Family Services **is required when** the newborn exhibits symptoms of withdrawal “or other observable and harmful effects” due to “the chronic or severe use of alcohol by the mother during pregnancy,”<sup>54</sup> OR when a drug test of the newborn is positive.
  - Though Louisiana law is unclear on this point, a positive test for prescription medication, such as methadone, buprenorphine, or cannabis, likely **does not** trigger a report unless the provider knows it was used unlawfully.

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## Maine<sup>55</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A provider **must** notify Maine Department of Health and Human Services when they know or have “reasonable cause to suspect” that a newborn:
  - has been “affected by substance use” or
  - “has withdrawal symptoms that require medical monitoring or care beyond standard newborn care,”
  - **only when** those symptoms are due or likely due to “prenatal drug exposure, whether the prenatal exposure was to legal or illegal drugs” or alcohol.”<sup>56</sup>
    - This notification does not necessarily constitute a report of child abuse or neglect, but must be submitted using the same procedure or system as a report of child abuse or neglect.<sup>57</sup>

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## Maryland<sup>58</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a child abuse or neglect report is **NOT** required.

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## Massachusetts<sup>59</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A child abuse report to the Massachusetts Department of Children and Families (DCF) is required **only if**:
  - A provider “has reasonable cause to believe that a child is suffering physical or emotional injury resulting from [...] physical dependence upon an addictive drug<sup>60</sup> at birth.”<sup>61</sup>

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## Michigan<sup>62</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result includes “any amount of alcohol, a controlled substance, or a metabolite of a controlled substance,” a health care provider must report the positive test unless it is the result of medical treatment for the newborn or birthing parent.<sup>63</sup>
  - A report is **NOT** required for prescribed opioid use disorder treatment, such as methadone or buprenorphine.
  - A report is **NOT** required for prescription cannabis.
- If a mandated reporter does not test a newborn, a report is required **only if** the health care provider “**knows**, or from the child's symptoms has **reasonable cause to suspect**” the newborn has “any amount of alcohol, a controlled substance, or a metabolite of a controlled substance.”<sup>64</sup>
  - A report is **NOT** required for prescribed opioid use disorder treatment such as methadone or buprenorphine.
  - A report is **NOT** required for prescription cannabis.

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## Minnesota<sup>65</sup>

- A provider is **NOT** required to test or report a parent who is not under their care or an infant who was not born under their care.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a pregnant or birthing person is **NOT** required by law, unless the pregnant person has “obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose.”<sup>66</sup> The provider is required to report a parent’s positive toxicology test to the Department of Human Services.
  - A provider is **NOT** required to report a pregnant person who has used substances/alcohol during pregnancy if:
    - The provider is providing or collaborating with other personnel to provide the person with prenatal care, postpartum care, or other health care services, including care of the infant, and the pregnant person continues to receive regular care.<sup>67</sup>
- Providers are not required to investigate a parent. However, if a medical assessment indicates the parent used a controlled substance recreationally, the provider is **required to test** each newborn infant born under their care.
  - If the newborn tests positive for a controlled substance, the provider is **required to report** to the local welfare agency as neglect.
  - If the newborn tests negative for a controlled substance, the provider is **NOT** required to report unless they have other reasons to believe the patient has used a controlled substance recreationally. Providers should take steps to ensure implicit bias is not contributing to suspicion of recreational controlled substance use.
  - A report of cannabis or alcohol use during pregnancy is **NOT** required by law.<sup>68</sup>

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## Mississippi<sup>69</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indication that a newborn is substance-affected does **NOT** trigger a mandatory report.

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## Missouri<sup>70</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A provider **must** refer families to the Children’s Division when infants are born and identified as affected by:
  - substance abuse,
  - withdrawal symptoms from prenatal drug exposure, or
  - fetal alcohol spectrum disorder.<sup>71</sup>
- These referrals do not constitute child abuse or neglect reports, and Missouri law does not allow child abuse or neglect charges against a parent for “indirectly harming her unborn child by failing to properly care for herself or by failing to follow any particular program of prenatal care.”<sup>72</sup>

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## Montana<sup>73</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A provider **must** “report to the [Department of Public Health and Human Services] any infant known to the provider to be affected by a dangerous drug.”<sup>74</sup>
  - Marijuana is a schedule 1 drug making it a dangerous drug under Montana’s definition.
  - Methadone is a schedule 2 drug and Buprenorphine is a schedule 3 drug, making them dangerous drugs under Montana’s definition.

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## Nebraska<sup>75</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indication that a newborn is substance-affected does **NOT** trigger a mandatory report.

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## Nevada<sup>76</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A provider **must** notify the Division of Child and Family Services within 24 hours if they know or have reasonable cause to believe that:
  - a newborn has been affected by fetal alcohol spectrum disorder or prenatal substance abuse, or
  - a newborn has withdrawal symptoms from prenatal drug exposure.<sup>77</sup> This is not a child abuse or neglect report.<sup>78</sup>

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## New Hampshire<sup>79</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a child abuse or neglect report is **NOT** required by state law.

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## New Jersey<sup>80</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- Though not direct evidence of abuse,<sup>81</sup> an infant born “substance-affected” requires a report to the New Jersey Department of Children and Families (DCF). These reports are not child abuse reports unless the provider specifies or alleges abuse, but any report under this section will trigger an investigation by DCF.
  - “Substance-affected” includes an infant:
    - “Whose mother had a positive toxicology screen for a controlled substance or metabolite thereof during pregnancy or at the time of delivery;
    - Who has a positive toxicology screen for a controlled substance after birth that is reasonably attributable to maternal substance use during pregnancy;

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## New Jersey (continued)

- Who displays the effects of prenatal controlled substance exposure or symptoms of withdrawal resulting from prenatal controlled substance exposure; **OR**
- Who displays the effects of a fetal alcohol spectrum disorder (FASD).<sup>82</sup>
- A positive screen for prescription medication that is a controlled substance in New Jersey, such as methadone, buprenorphine, or cannabis, **does** trigger a report under this section.

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## New Mexico<sup>83</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indication that a newborn is substance-affected does **NOT** trigger a mandatory report.<sup>84</sup> New Mexico courts have held that prenatal substance use alone does not indicate or prove child neglect.<sup>85</sup>

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## New York<sup>86</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a child abuse or neglect report is **NOT** required by state law.<sup>87</sup>

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## North Carolina<sup>88</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
  - If a pregnant or birthing person “has had a medical evaluation, including history and physical, or behavioral health assessment indicative of an active substance use disorder, during the pregnancy or at time of birth[,]” a POSC notification to the Department of Health and Human Services (NC DHHS) is required. This is not a child abuse or neglect report.<sup>89</sup>



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## North Carolina (continued)

- A drug test on a newborn is **NOT** required by law.
  - However, North Carolina’s POSC notification standards are more detailed than in some other states. In addition to the above POSC requirement for the pregnant or birthing person, North Carolina requires a POSC notification for a newborn only if “the infant has a positive urine, meconium or cord segment drug screen with confirmatory testing in the context of other clinical concerns[,]” meaning that a positive substance test for a newborn alone does not trigger a notification. The notification is only triggered when that positive test occurs **in the context of other clinical concerns**. This is not a child abuse or neglect report.<sup>90</sup>
- A positive drug test or indication that a newborn is substance-affected does **NOT** trigger a mandatory child abuse or neglect report.

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## North Dakota<sup>91</sup>

- A drug test on a pregnant or birthing person **may be** required by law.
  - If obstetrical complications are present that suggest alcohol misuse or nonmedical use of a controlled substance, a physician caring for the birthing parent **must, with consent** and within 8 hours of delivery, drug test the birthing parent. The physician **must** test without consent if a specimen is already available to them.
    - If the test is positive, the physician **must** report the results to the Department of Health and Human Services (DHS).
    - If the test is negative or if the birthing parent refuses consent, the physician still **must** report to DHS **only if** “other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose or has engaged in alcohol misuse.”<sup>92</sup>
- A drug test on a newborn is required **only if** the “physician has reason to believe based on a medical assessment” of the birthing parent or infant that the birthing parent has “used a controlled substance or engaged in alcohol misuse during the pregnancy.”
  - If the results are positive, a physician **must** report the results as neglect.
  - If the results are negative, a physician **must** report the results as neglect “if other medical evidence of prenatal exposure to a substance or alcohol misuse is present.”<sup>93</sup>

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## Ohio<sup>94</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a drug test for a newborn is positive, then the provider **must** report to the Department of Job and Family Services.<sup>95</sup>
  - This required report does **NOT** apply to cannabis use.
  - This required report does **NOT** apply to use of methadone, buprenorphine, or other prescription medications if taken as prescribed.

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## Oklahoma<sup>96</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a physician, surgeon, or other healthcare professional involved in prenatal care does drug test an infant, they must report to the Department of Human Services if the infant tests positive for alcohol or a controlled dangerous substance.<sup>97</sup>
  - This **does include** prescribed medications like methadone and buprenorphine, as well as cannabis.

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## Oregon<sup>98</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive,<sup>99</sup> a child abuse or neglect report is **NOT** required by state law.

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## Pennsylvania<sup>100</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A mandated reporter must notify the Department of Human Services of the Commonwealth **only if** a newborn is affected by “substance use or withdrawal symptoms resulting from prenatal drug exposure; or a Fetal Alcohol Spectrum Disorder.”<sup>101</sup> This does not constitute a child abuse or neglect report.
  - This **does include** withdrawal symptoms resulting from prescription medication, such as methadone or medical marijuana.
- Prenatal substance use does **NOT** constitute child abuse or neglect.<sup>102</sup>

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## Rhode Island<sup>103</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.<sup>104</sup>
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a drug test for a newborn is positive, a child abuse or neglect report is **NOT** required by state law.
- A provider is **NOT** required to test or report a parent who is not under their care or an infant who was not born under their care.

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## South Carolina<sup>105</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A report to South Carolina Department of Social Services is required **only if**:
  - Either the newborn or the birthing parent tests positive for the presence of a controlled substance, unless that presence is the result of medical treatment for the parent or newborn.
    - A report is **NOT** required for prescribed opioid use disorder treatment such as methadone or buprenorphine.
    - A report is **NOT** required for prescription cannabis.
  - The newborn is diagnosed with Fetal Alcohol Syndrome.

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## South Dakota<sup>106</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A report<sup>107</sup> to the Division of Child Protection Services is **only required by law when** an infant tests positive for a drug, or where the infant “was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed.”<sup>108</sup>
  - Reporting is **NOT** required if the presence of the drug is the result of medical treatment for the newborn or birthing parent, so it would not include medicines like methadone or buprenorphine for opioid use disorder treatment if taken as recommended.

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## Tennessee<sup>109</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn tests positive for “illegal drugs[,]” the provider **must** file a child abuse report.<sup>110</sup>
  - A report is **NOT** required for prescribed opioid use disorder treatment such as methadone or buprenorphine.
  - A report is **NOT** required for prescription cannabis.
  - A report is **NOT** required for alcohol.

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## Texas<sup>111</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A child abuse report to the Texas Department of Family and Protective Services is required in the case of prenatal substance or alcohol use **only if** the birthing parent:
  - Knew or should have known of the pregnancy, and
  - The parent’s prenatal substance use “exposed the infant to loss or injury or jeopardized the infant’s emotional or physical health.”<sup>112</sup>

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## Utah<sup>113</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A healthcare provider “who attends the birth of a newborn child or cares for a newborn child” must make a report to the Division of Child and Family Services (DCFS) as soon as possible **only if** they determine a newborn:
  - is suffering adverse effects from prenatal substance abuse,
  - has fetal alcohol syndrome (or fetal spectrum disorder), or
  - demonstrates drug or alcohol withdrawal symptoms.<sup>114</sup>
- That healthcare provider also must report to DCFS if “the parent of the newborn child or a person responsible for the child’s care demonstrates functional impairment or an inability to care for the child as a result of the parent’s or person’s substance abuse.”<sup>115</sup>
- This reporting requirement does not apply to prescribed medications, such as methadone, buprenorphine, or medical cannabis.<sup>116</sup>

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## Vermont<sup>117</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indication that a newborn is substance-affected does **NOT** trigger a mandatory report.

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## Virginia<sup>118</sup>

- A drug test on a pregnant or birthing person is NOT required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is NOT required by law.
- A provider must report to the Virginia State Department of Social Services (DSS) when:
  - Within 6 weeks of birth, the provider finds that a child was born “affected by substance use or [is] experiencing withdrawal symptoms resulting from in-utero drug exposure,” OR
  - Within four years of birth, a provider finds that a child has an illness or condition attributable to prenatal controlled substance use or in-utero exposure to alcohol.<sup>119</sup>

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## Virginia (continued)

- Though this report is not a per se finding of child abuse or neglect, it may trigger an investigation by DSS.<sup>120</sup>
  - This reporting requirement does include a newborn affected by or experiencing withdrawal symptoms from prescribed medications like methadone, buprenorphine, or medical marijuana.
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## Washington<sup>121</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
    - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
  - A drug test on a newborn is **NOT** required by law.
  - A positive drug test or indication a newborn is substance-affected does **NOT** trigger a mandatory report.
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## Washington D.C. ( District of Columbia)<sup>122</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
    - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
  - A drug test on a newborn is **NOT** required by law.
  - If a newborn is drug tested and the result is positive, a child abuse or neglect report is **NOT** required by state law.
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## West Virginia<sup>123</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive, a provider **must** make a child abuse report to the West Virginia Department of Health and Human Resources.<sup>124</sup>
  - Because the case law applies to “illegal drugs” this would **NOT** include the use of prescribed medications such as medical marijuana, methadone, or buprenorphine if taken as prescribed.

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## Wisconsin<sup>125</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- Testing on a newborn is **only required by law if** a hospital employee, social worker, or intake worker who provides health care “suspects that an infant has a fetal alcohol spectrum disorder[.]”<sup>126</sup> The physician must then evaluate the infant for FASD.
  - A physician **must** report a FASD diagnosis to the Department of Children and Families. This is not a child abuse or neglect report.
- If a pregnant person is drug tested and the result is positive, a child abuse report is required by state law **only if** there is:
  - “Serious physical harm inflicted” on a fetus or, “the risk of serious physical harm” to the child at birth “caused by the habitual lack of self-control” of the expectant parent “in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree.”<sup>127</sup>
    - Because the law only requires reports for a “habitual lack of self-control” and “severe degree” of use, prescription medication used as prescribed, such as methadone, buprenorphine, or medical cannabis, would **NOT** require a report.

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## Wyoming<sup>128</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If screening indicates the need for a drug test, providers should ask for and get informed consent prior to drug testing a pregnant or birthing person.
- A drug test on a newborn is **NOT** required by law.
- A positive drug test or indication a newborn is substance-affected does **NOT** trigger a mandatory report.

## Citations

1. The reporting requirements described in this fact sheet are limited to requirements around prenatal substance use exposure, and thus are generally limited to medical providers who work directly with pregnant patients and newborns. Some requirements are limited only to the providers who assisted with the delivery of a newborn. For more in-depth assistance around your state's specific reporting laws and whether they apply to your specific profession, you can contact If/When/How [here](#). You can also find other resources for medical providers on our provider page, [here](#).
2. Minnesota and North Dakota.
3. Louisiana, Minnesota, North Dakota, and Wisconsin.
4. See, e.g., Imani Worthy, Tracy Serdjenian & Jeanette Vega Brown, Trapped in the Web of Family Policing: The Harms of Mandated Reporting and the Need for Parent-Led Approaches to Safe, Thriving Families, *FJ QUARTERLY* 39–49 (Spring 2022). See generally Dorothy E. Roberts, Torn Apart (2022).
5. The role of a hospital or clinic attorney is to protect the hospital or clinic from liability. This may sometimes lead to more conservative interpretations of the law than what you find here. We believe that hospital and clinic providers can both follow the law and protect themselves from liability. If you would like support in advocating internally to change your institutional policies, you can contact our technical assistance team at [technicalassistance@ifwhenhow.org](mailto:technicalassistance@ifwhenhow.org).
6. [Ala. Code § 26-15-3.2](#). Alabama has a chemical endangerment law, and the Alabama Supreme Court found that substance use by a pregnant person is a crime under this law.
7. [Ala. Code § 26-14-1](#). Under the state's reporting statute definition of child abuse, there is no mention of substance exposure. However, it is the policy of the state welfare agency to consider a positive drug test to indicate child abuse. Alabama's state agency definition of child abuse applies to CPS investigations, and the policy does not explicitly apply to mandatory reporters or ask that mandatory reporters use this expanded definition of child abuse to determine whether or not to report. [See Ala. Child Protective Services, Child Abuse/Neglect \(CA/N\) Allegations and Definitions \(Sept. 2023\)](#).
8. [Alaska Stat. § 47.17.024](#).
9. [Id.](#)
10. [Ariz. Rev. Stat. §§ 13-3620\(E\), 8-201\(25\)\(c\), 13-3401](#).
11. [Id. § 13-3401](#). A link to this list of drugs is [here](#).
12. [Id. § 8-201\(25\)\(c\)](#).
13. [Id. § 13-3401\(20\(v\)-\(w\)\)](#).
14. [Ark. Code Ann. §§ 9-27-303, 12-18-103\(14\)\(B\)](#).
15. [Ark. Dept. of Human Services, Division of Child. and & Fam. Servs., PUB-357, Child Maltreatment Assessment Protocol 35 \(2013\)](#).



## Citations

16. Cal. Penal Code §§ [11165.13](#), [11166](#).
17. [Id. § 11165.13](#). The section also states “However, a report based on risk to a child which 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.”
18. Colo. Rev. Stat. §§ [19-3-304](#), [19-1-103\(1\)\(a\)\(VII\)](#), [19-3-102\(1\)\(g\)](#).
19. [Id. § 19-1-103\(1\)\(a\)\(VII\)](#) (emphasis added).
20. [Id. § 19-1-129\(1\)](#).
21. [Id. § 18-18-102\(5\)](#).
22. [Conn. Gen. Stat. § 17a-101a](#); [2018 Conn. Pub. Act 18-111 § 5](#).
23. [Conn. Gen. Stat. §17a-102a](#).
24. Del. Code Ann. tit. 16, §§ [902B](#), [903B](#).
25. “A provider involved in delivery or care of a newborn” must submit a CAPTA notification to the Department of Children and Families when, in their judgment, a newborn displays effects “consistent with prenatal substance exposure, withdrawal symptoms from prenatal substance exposure, or fetal alcohol spectrum disorder.” [Id. § 903B](#). A notification of this type does not constitute a report of abuse/neglect, “unless risk factors are present that would jeopardize the safety and well-being of the infant.” See also Margaret Lloyd Sieger et al., Novel Implementation of State Reporting Policy for Substance-Exposed Infants, HOSP. PEDIATRICS Vol. 12, Issue 10 (Oct. 2022).
26. [State of Del., Plan of Safe Care Implementation Guide: For Infants with Prenatal Substance Exposure and their Families 7 \(2019\)](#).
27. Fla. Stat. §§ [39.201](#), [39.01\(34\)\(g\)\(1\)](#), [39.205\(1\)](#).
28. [Id. § 39.01\(34\)\(g\)\(1\)](#).
29. Ga. Code. Ann. §§ [15-11-2\(2\)](#), [15-11-2\(56\)](#).
30. [Id. § 15-11-2\(56\)](#).
31. Use of marijuana while pregnant is not prenatal abuse as marijuana is not a controlled substance under Georgia law. See *C. W. v. Department of Human Services*, 836 S.E.2d 836, 837 (Ga. Ct. App. 2019).
32. [Haw. Rev. Stat. § 350-1.1](#).
33. Idaho Code §§ [16-1602\(1\)](#), [-1605](#), [-1605\(4\)](#).
34. [325 Ill. Comp. Stat 5/4](#); [705 Ill. Comp. Stat. 405/2-3\(1\)\(c\)](#).
35. However, health care providers giving prenatal services must recommend referral to substance abuse treatment to any pregnant person suspected of having a substance use disorder. The treatment center or hospital where a provider refers must be licensed by the Department of Human Services, and this treatment is covered under state Medicaid. [305 Ill. Comp. Stat. 5/5-5](#).
36. [325 Ill. Comp. Stat. 5/3](#); [Ill. Admin. Code tit. 89, § 300 App. B. 15/65 \(Option C\)](#).
37. [Ill. Admin. Code tit. 89, § 300 App. B. 15/65 \(Option B\)](#).
38. [Id. § 300 App. B. 15/65 \(Option C, Note\)](#).
39. [Ind. Code § 31-34-1-10 to -13](#).

## Citations

40. A child is a child in need of services (CHINS) if they are born with the below conditions and need care that they are not getting or are unlikely to get without court involvement.

- “The child is born with: (A) fetal alcohol syndrome; (B) neonatal abstinence syndrome; or (C) any amount, including a trace amount, of a controlled substance, a legend drug, or a metabolite of a controlled substance or legend drug in the child’s body, including the child’s blood, urine, umbilical cord tissue, or meconium.”
- “Or the child: (A) has an injury; (B) has abnormal physical or psychological development; (C) has symptoms of neonatal intoxication or withdrawal; or (D) 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.”

41. Applies to legend drugs and controlled substances. Ind. Code § 31-34-1-12 to -13.

42. DCS considers drug screening when there is an indication that substance use may be a factor in abuse/neglect. See Ind. Dept. of Child Servs., Child Welfare Pol’y: Drug Screening in Assessments (May 2022).

43. Iowa Code §§ 232.77(2)(a)-(b), 232.69.

44. Id. § 232.77(2)(a).

45. Id. § 232.77(2)(b).

46. Kan. Stat. Ann. § 65-1, 163(b).

47. Kansas law states that an infant born with “withdrawal symptoms resulting from prenatal exposure to a legal or illegal substance” MAY constitute neglect. This gives health care providers discretion to determine whether or not parental substance use is or will be severe enough to trigger a child neglect report. Kan. Admin Regs. § 30-46-10.

48. Ky. Rev. Stat. Ann. §§ 214.160, 600.020.

49. Id. § 214.160(7).

50. Id. § 600.020 (1)(a)(3).

51. Certain marijuana products are exempt from being schedule 1 controlled substances if they are excluded from the state’s definition of marijuana. Medicinal cannabis is not considered marijuana under the state’s definition and therefore is not a controlled substance. See Id. § 218A.010(28)(h); 902 Ky. Admin Regs. 55:015 § 1(3).

52. La. Child Code Ann. art. 609, 610(G).

53. Id. at 610(G)(1).

54. Id. at 610(G)(2).

55. Me. Stat. tit. 22, §§ 4011-B, 4014-B.

56. Id. § 4011-B(1).

57. Id.

58. Md. Code Ann., Fam. Law § 5-704.2.

59. Mass. Gen. Laws ch. 119, § 51A.

## Citations

60. “Addictive drug” is not currently defined in law, so providers have discretion as to the drugs that apply here. Currently, there is no definitive exemption for prescribed medications including those used for drug treatment.
61. Id. § 51A(a), included under abuse/neglect reporting.
62. Mich. Comp. Laws § 722.623a.
63. Id.
64. Id.
65. Minn. Stat. §§ 260E.31, 260E.32.
66. Test is required within eight hours after delivery to determine if there is evidence that the person has used a controlled substance. Id. § 260E.32(a).
67. If the person does not keep receiving regular care after the provider has made attempts to contact them, then the provider is required to report to the local welfare agency. Minn. Stat. §§ 260E.31(1)(b).
68. Minn. Dept. of Human Servs., DHS-5144, Minn. Child Maltreatment Intake, Screening and Response Path Guidelines 11 (Oct. 2023).
69. Miss. Code Ann. §§ 43-21-353, -105.
70. Mo. Rev. Stat. §§ 191.737(1), 191.737(2)(1)-(2).
71. Id. § 191.737(2).
72. Id. § 1.205; see also *State v. Wade*, 232 S.W.3d 663, 666 (Mo. Ct. App. W. Dist. 2007).
73. Mont. Code Ann. § 41-3-201(3).
74. Dangerous drug refers to a drug, substance, or immediate precursor in Schedules I through V. Mont. Code Ann. § 50-32-101(6).
75. Neb. Rev. Stat. § 28-711.
76. Id. §§ 432B.220, 432B.330.
77. Id. § 432B.220(3).
78. “[A] parent’s substance abuse alone does not establish parental unfitness. Instead, there must be clear and convincing evidence that the parent’s substance abuse consistently prevents the parent from providing the child with proper care, guidance, and support.” *In re G.R.S.*, 531 P.3d 1249, 1256 (Nev. 2023).
79. N.H. Rev. Stat. Ann. §§ 132:10-e, -f.
80. N.J. Stat. Ann. §§ 9:6-8.10; 9:6-8.21(c).
81. In February 2013, the New Jersey Supreme Court held that prenatal drug exposure may not result in a finding of abuse or neglect if there is no evidence of “actual harm,” “imminent danger,” or “substantial risk” upon the birth of the child. *N.J. Dept. of Child. and Families v. A.L.*, 59 A.3d 576, 580 (N.J. 2013).
82. N.J. Admin. Code § 3A:26-1.2 (emphasis added, numeration omitted).
83. N.M. Stat. Ann. § 32A-4-2.

## Citations

84. "A finding that a pregnant woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation or routine toxicology screen shall not alone form a sufficient basis to report child abuse or neglect to the department pursuant to Subsection A of this section. A volunteer, contractor or staff of a hospital or freestanding birthing center shall not make a report based solely on that finding and shall make a notification pursuant to Subsection H of this section." Id. § 32A-4-3.
85. See State of N.M. ex rel CYFD v. Amanda H., 2007-NMCA-029, 141 N.M. 299, 154 P.3d 674 ("...an unfavorable personal status of a parent, such as incarceration, mental illness, prior convictions, or addiction, is alone insufficient to support an adjudication that a child is neglected. The Abuse and Neglect Act requires that the unfavorable status render the parent unable to provide proper parental care or discharge his or her responsibilities to the child.").
86. N.Y.C. Admin. for Child. Servs. & N.Y.C. Dept. of Health and Mental Hygiene, Joint Guidance, Reporting and Planning Requirements for Newborns Prenatally Exposed to Substances and Their Caregivers (Nov. 2020).
87. A positive toxicology test result, by itself, for a parent or an infant is not child abuse or maltreatment and does not require a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR). Id.
88. N.C. Gen. Stat. § 7B-301.
89. N.C. DEPT. OF HEALTH & HUMAN SERVS., North Carolina Requirement to Notify Child Protective Services (CPS) of Substance Affected Infant, DSS-1403 [Rev. 7/2017], [https://policies.ncdhhs.gov/divisional/social-services/forms/dss-1403-north-carolina-requirement-to-notify-child-protective-services-cps-of-substance-affected-infant/@@display-file/form\\_file/DSS-1403.pdf](https://policies.ncdhhs.gov/divisional/social-services/forms/dss-1403-north-carolina-requirement-to-notify-child-protective-services-cps-of-substance-affected-infant/@@display-file/form_file/DSS-1403.pdf).
90. Id.
91. N.D. Cent. Code § 50-25.1-16, -17, -18.
92. Id. § 50-25.1-17(1).
93. Id. § 50-25.1-17(2).
94. Ohio Admin. Code 5101:2-1-01 (definitions at 310-311); Ohio Admin. Code 5101:2-36-01(F)(1)(a)(i).
95. In re Baby Boy Blackshear, 736 N.E.2d 462 (Ohio 2000). The Ohio Supreme Court found that an infant's positive drug screen for illegal substances due to prenatal exposure makes the infant an "abused child" under the state's statutory definition of abused child, thus triggering a report. Because this case applies only to "illegal" substances, it does not apply to marijuana, which is legal in Ohio, or to buprenorphine or methadone if taken as prescribed (legal treatments for substance use disorder).
96. Okla. Stat. tit.10A, § 1-2-101.
97. Id. § 1-2-101(B)(3).

## Citations

98. Or. Rev. Stat. §§ [419B.005\(1\)\(J\)](#), [430.915](#).
99. Or. Rev. Stat. § [430.915](#) (“If during routine pregnancy or prenatal care, the provider determines that the patient misuses drugs, alcohol, or uses unlawful controlled substances, or the patient admits such use to the provider, state policy advises providers to encourage and facilitate counseling, drug therapy and other assistance to the patient to avoid having the child, when born, become subject to protective services.”).
100. 23 Pa. Cons. Stat. §§ [6311](#), [6386](#).
101. Id. § [6386\(a\)](#).
102. Id. § [6386\(a.1\)](#); see also *In re L.J.B.*, 199 A.3d 868, 875–78 (Pa. 2018) (holding that the definition of “child” in the child abuse statute does not include a fetus, and that a mother could not be a “perpetrator” of child abuse due to use of opioids while pregnant).
103. 40 R.I. Gen. Laws § [40-11-6](#).
104. DCYF guidance requires a report if a provider administers a drug test to the parent of an infant and there is a positive result for an illegal or non-prescribed substance, or misuse of a prescription medication. R.I. Dept. of Child., Youth, & Families, [Infant Plans of Safe Care Guidance Document 3](#) (June 2018).
105. S.C. Code Ann. §§ [63-7-310](#), [-1660\(F\)](#).
106. S.D. Codified Laws §§ [26-8A-2](#), [-35](#).
107. This is part of South Dakota’s definition of child abuse.
108. S.D. Codified Laws § [26-8A-2\(9\)](#).
109. Tenn. Code Ann. §§ [37-1-102\(b\)\(1\)](#), [-403](#).
110. Tenn. Att’y Gen., [Opinion Letter No. 02-136 on Drug Tests on Pregnant Women and Infants and the Child Abuse Reporting Statute](#) (Dec. 23, 2002). Though “illegal drugs” is not defined in this opinion, elsewhere in Tennessee law it includes drugs that violate state law if distributed. Thus, it would not include prescription medication. See [Tenn. Code Ann. 29-38-104\(1\)](#).
111. Tex. Fam. Code Ann. §§ [261.101](#), [261.001\(4\)](#); [40 Tex. Admin. Code § 707.467\(d\)](#).
112. [40 Tex. Admin. Code § 707.467\(d\)](#).
113. [Utah Code Ann. § 80-2-603](#); [Utah Admin. Code r. 512-80-2](#).
114. [Utah Code Ann. § 80-2-603\(2\)\(a\)](#).
115. Id. § [80-2-603\(2\)\(b\)](#).
116. Id. § [80-2-603\(1\)\(d\)\(ii\)](#).
117. Vt. Stat. Ann. tit. 33, §§ [4912](#), [4913](#).
118. [Va. Code Ann. § 63.2-1509](#).
119. Id. § [63.2-1509\(B\)](#).
120. Id.
121. [Wash. Rev. Code § 26.44.030](#).
122. D.C. Code §§ [4-1321.02\(d\)](#), [16-2301\(9\)\(A\)\(ix\)](#).
123. W. Va. Code § [49-1-201](#), [-2-803](#).

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## Citations

124. *In re A.L.C.M.*, 801 S.E.2d 260, 262 (W.Va. 2017).

125. Wis. Stat. §§ 48.02(1)(am), 146.0255, 146.0257.

126. *Id.* § 146.0257.

127. *Id.* § 48.02(1)(am). A “severe degree” is not further defined in statute.

128. Wyo. Stat. Ann. §§ 14-3-205, 35-2-1401.