



STATE STATUTES
CURRENT THROUGH NOVEMBER 2024

Plans of Safe Care for Infants With Prenatal Substance Exposure and Their Families

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

Substance-use disorders affect parents and other caregivers and can have negative effects on the health, safety, and well-being of children. One major area of concern is responding to the care and treatment needs of infants with prenatal substance exposure and their families. To receive Child Abuse Prevention and Treatment Act (CAPTA) funds, States are required to ensure they operate programs relating to child abuse and neglect that include the following:¹

- Policies and procedures (including appropriate referrals to child protection services systems and for other appropriate services) to address the needs of infants born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug

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

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exposure or fetal alcohol spectrum disorder (FASD), including a requirement that health-care providers involved in the delivery or care of such infants notify the child protective services (CPS) system of the condition of those infants

- The development of a plan of safe care (POSC) for infants born and identified as being affected by substance abuse or withdrawal symptoms or FASD to ensure the safety and well-being of such infants following the infants' release from the care of health-care providers, including through addressing the health and substance use disorder treatment needs of the infants and affected family or caregivers

For this publication, statutes and regulations regarding requirements for providing appropriate care for these infants were collected from across all States, the District of Columbia, and U.S. Territories.² Agency policies and guidance publications published on State child welfare agency websites were also reviewed. In addition, Tribal codes for Tribes with approved title IV-E programs were accessed from Tribal websites.

WHAT IS A PLAN OF SAFE CARE?

A POSC is a plan designed to ensure the safety and well-being of an infant with prenatal substance exposure following the infant's release from the care of a health-care provider by addressing the health and substance use treatment needs of the infant and affected family or caregiver. States have flexibility in implementing their POSCs. For example, the plan can be initiated in advance of the infant's birth by a designated community organization, including an early intervention services provider, a home visiting program, a substance use disorder treatment provider, or the health-care provider at the birth hospital, as part of the discharge process to ensure services are provided to the infant and the affected family or caregiver.

While the plan may address the immediate safety, health, and developmental needs of the affected infant, the POSC must also include the health and substance use disorder treatment needs of the affected parents or caregivers. It is best practice for the POSC to be developed with input from parents and caregivers, in collaboration with the health-care provider and other professionals and agencies involved in supporting the affected infant and family. It also should include referrals to appropriate services that support the affected infant and the infant's family or caregivers.

² Statutes and regulations published on LexisNexis were accessed for this purpose.

NOTIFICATION AND REPORTING REQUIREMENTS

Laws in approximately 24 States,³ the District of Columbia, and the Port Gamble S'Klallam Tribe include prenatal substance exposure in their civil definitions of child abuse or child neglect. Fourteen States,⁴ the Penobscot Nation, and the Port Gamble S'Klallam Tribe do not consider substance use during pregnancy to be child abuse when there is no indication of maltreatment or safety concerns. Eleven States,⁵ Guam, Puerto Rico, and the U.S. Virgin Islands do not include substance abuse during pregnancy in their child abuse reporting laws.

Laws or policies in 35 States⁶ and the District of Columbia require health-care providers to make reports to CPS when they are involved in the delivery or care of infants whose conditions or symptoms at birth indicate prenatal exposure to drugs, alcohol, or other controlled substances. Specifically, the laws and policies reviewed require a report or notification when the infant or mother has a toxicology screen that is positive for substances or the infant exhibits physical, neurological, or behavioral symptoms consistent with prenatal substance exposure, withdrawal symptoms from

prenatal substance exposure, or FASD. While CAPTA requires notification to CPS, the laws, codes, or policies in 18 States,⁷ the District of Columbia, and the Penobscot Nation make clear that a notification or report is not considered a report of child abuse or neglect when there is no indication of maltreatment to the infant or no identified safety concerns. Except for Wisconsin, these laws do not require a report to CPS before the child's birth.

ASSESSMENT OF THE INFANT AND FAMILY

Depending on the case, families will be assessed to identify needs and any safety concerns. For cases in which the child welfare agency receives a report of an infant with prenatal substance exposure, the agency will make an initial intake assessment to determine whether the allegation meets the State's definition of child abuse or neglect. If the criteria for abuse or neglect are met, the infant and family will be referred to CPS for an investigation or family assessment. If the infant's condition does not meet the criteria for abuse or neglect, the family may be assigned to a caseworker or referred to a community agency for an assessment of the family's needs.

³ The word "approximately" is used to stress the fact that States frequently amend their laws and applies to all data in this publication. The information in this publication is current only through November 2024. Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin include substance-exposed infants in their definition of child abuse and neglect.

⁴ California, Delaware, Kentucky, Maine, Maryland, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, and Wyoming

⁵ Alaska, Connecticut, Hawaii, Idaho, Mississippi, Nebraska, New York, North Carolina, Rhode Island, Vermont, and West Virginia

⁶ Alabama, Arizona, California, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin

⁷ Arkansas, California, Connecticut, Delaware, Georgia, Illinois, Louisiana, Maine, Maryland, Michigan, Nevada, New Mexico, New York, North Carolina, Pennsylvania, Vermont, Virginia, and Wyoming

In 22 States,⁸ a caseworker conducts a safety assessment to determine whether the infant will be safe in the infant's home. The parents' ability to meet the infant's needs and perform essential parental responsibilities is considered in the assessment of the newborn's safety. Other factors that may be considered include the following:

- The mother's behavior and interaction or bonding with the newborn (in 11 States⁹ and the District of Columbia)
- Parental protective capacities of the mother and any other adult caregivers, both in and out of the home (in 5 States¹⁰)
- The family's support system (in 16 States¹¹)
- The home environment (in 11 States¹²)
- Evidence of preparation and safe care for the infant, such as a crib, clothing, and formula (in 10 States¹³)
- Mental health concerns or the presence of domestic violence (in 7 States¹⁴)
- Assessment of all other adults and children living in the home (in 6 States¹⁵)

Additional assessments are made to determine the ongoing needs of the infant and the infant's family and other caregivers for

services and other supports. The assessments may include consideration of the following factors:

- The infant's current condition, special needs, or disabilities (in 12 States¹⁶)
- The nature and extent of the mother's alcohol and drug use and treatment history (in 14 States¹⁷)
- Information on the parents' mental health concerns, such as postpartum depression and any co-occurring disorder (in 7 States¹⁸)
- The presence of other children in the home and their current care and condition (in Alabama and Colorado)
- Family strengths and involvement of the infant's father and other family members (in Arizona and Colorado)
- The mother's level of cooperation and willingness to address concerns (in 4 States¹⁹)
- The extent and availability of the newborn's family or other individuals to assist with caregiving and the provision of other support (in Colorado and Maryland)
- The availability of stable housing with no apparent safety or health hazards (in Colorado, Connecticut, and Maryland)

⁸ Alabama, Arizona, Arkansas, California, Illinois, Iowa, Kansas, Louisiana, Maryland, Missouri, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin

⁹ Arizona, Colorado, Louisiana, Maryland, Michigan, Nevada, North Carolina, Oregon, Tennessee, Virginia, and West Virginia

¹⁰ Alabama, Arizona, Colorado, New Jersey, and New York

¹¹ California, Colorado, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Michigan, Missouri, Nevada, New Jersey, North Carolina, Oregon, Tennessee, and Virginia

¹² Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Iowa, Louisiana, Michigan, and Virginia

¹³ Arizona, California, Colorado, Louisiana, Nevada, North Carolina, Tennessee, Virginia, West Virginia, and Wisconsin

¹⁴ Arizona, Colorado, Florida, Michigan, Oregon, Virginia, and Wisconsin

¹⁵ Colorado, Georgia, Iowa, Louisiana, New Jersey, and Wisconsin

¹⁶ Arizona, California, Colorado, Georgia, Maryland, Nevada, New Jersey, New York, North Carolina, Oregon, Tennessee, and Virginia

¹⁷ Alabama, Arizona, California, Colorado, Florida, Georgia, Maryland, Nevada, New Jersey, New York, North Carolina, Oregon, Tennessee, and Virginia

¹⁸ Arizona, Colorado, Connecticut, Florida, Michigan, North Carolina, and Oregon

¹⁹ Colorado, Connecticut, Maryland, and Tennessee

RESPONSIBILITY FOR THE DEVELOPMENT OF THE PLAN OF SAFE CARE

Laws and policies in 33 States,²⁰ the District of Columbia, the Penobscot Nation, and the Port Gamble S'Klallam Tribe require the child welfare agency to develop a POSC to address the health and substance use disorder treatment needs for any infant who has been identified as affected by the mother's substance use as well as the treatment needs

of the affected parent or caregiver. In nine States,²¹ the plan can be initiated by the health-care provider at the birth hospital as part of the discharge process to ensure the infant will receive appropriate care in the home. However, the responsibility for developing and monitoring the plan ultimately rests with the State's child protective services or child welfare agency.

Providing Care to Pregnant Mothers

A study conducted by the Legislative Analysis and Public Policy Association and published in their report [Substance Use During Pregnancy and Child Abuse or Neglect: Summary of State Laws](#),¹ found that 31 States,² the District of Columbia, and Guam include substance use disorder treatment provisions in statute or regulation that apply specifically to pregnant individuals. These provisions, which are found in the laws and regulations of State departments of health or mental health, typically require programs that offer substance use disorder treatment to provide priority admission to pregnant women. In addition to providing substance abuse treatments that meet the mother's needs without harming her unborn child, the treatment provider must ensure that the mother receives appropriate prenatal care.

In 11 of these States,³ the treatment provider works with the woman and her family to develop a plan of care that addresses the family's ability to provide a safe and appropriate home so that the family can parent the infant at home after the infant's birth, without the necessity of CPS intervention. The services and supports offered may include, but are not limited to, family counseling; education on infant care, health, and nutrition and managing neonatal abstinence syndrome; health care for the infant and mother; mental health care for the mother and other family members; transportation; and child care.

¹ Legislative Analysis and Public Policy Association. (2024). [Substance Use During Pregnancy and Child Abuse or Neglect: Summary of State Laws](#).

² Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Maryland, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming

³ California, Colorado, Connecticut, Delaware, Illinois, Kansas, Kentucky, Minnesota, Mississippi, New York, and Wyoming

²⁰ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

²¹ Colorado, Nevada, New Hampshire, New Mexico, Ohio, Rhode Island, Vermont, Virginia, and Wyoming

The POSC required by CAPTA differs from a safety plan that addresses the immediate safety of the child. The child welfare agency determines a POSC, which can be a continuous and longer-term plan for the family, focusing on the infant's ongoing health, development, safety, and well-being. While developing the plan, the agency may consider information provided by various professionals and disciplines. The agency may actively involve the parents or caregivers, the infant's health-care professionals, the parents' or caregivers' substance use treatment service providers, out-of-home care providers, and supportive adults identified by the parents or caregivers. The plan may also include information from early childhood intervention providers, home visitors, public health personnel, and other community supports, as appropriate.

SERVICES FOR THE INFANT

When the mother is in treatment during pregnancy, ideally, the POSC is developed in advance of the infant's birth so services can be in place and, when possible, placement of the infant in out-of-home care is prevented. If identification of the affected infant happens at the time of birth, the POSC is developed before the infant is discharged from the care of the health-care provider. The plan will address the safety, health, and substance use disorder treatment needs of the infant and

affected family members or caregivers. Laws, codes, and policies in 30 States,²² the District of Columbia, the Penobscot Nation, and the Port Gamble S'Klallam Tribe provide for referrals to the services needed to enhance the overall well-being of the infant and the infant's parents or caregivers. Specific services for the infant may include the following:

- Developmental screening and assessment (in 6 States²³)
- Referral to early intervention services (in 17 States²⁴ and the District of Columbia)
- Medical services needed to meet the ongoing health needs of the newborn (in 23 States²⁵)
- Home visiting programs (in 14 States²⁶ and the District of Columbia)

²² Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming

²³ Alabama, Colorado, Connecticut, Georgia, Nevada, and Wyoming

²⁴ Alabama, Arkansas, Colorado, Florida, Georgia, Michigan, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, Rhode Island, Virginia, Washington, West Virginia, and Wyoming

²⁵ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Kansas, Missouri, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Texas, Virginia, Washington, West Virginia, and Wyoming

²⁶ Arizona, Colorado, Connecticut, Delaware, Florida, Iowa, Mississippi, Missouri, New Jersey, New Mexico, Pennsylvania, Rhode Island, Virginia, and West Virginia

SERVICES FOR PARENTS OR OTHER CAREGIVERS

A POSC should be designed to meet both the short- and long-term needs of the family, with the goal of strengthening the family and keeping the child safely in the home. A POSC includes several components, depending on the needs of the family, and may include any of the following:

- Substance use assessment and treatment services (in 25 States,²⁷ the District of Columbia, the Penobscot Nation, and the Port Gamble S'Klallam Tribe)
- Medical services needed to meet the ongoing health needs of the mother and other family members (in 16 States²⁸ and the District of Columbia)
- Mental health services (in 14 States,²⁹ the Penobscot Nation, and the Port Gamble S'Klallam Tribe)
- Assistance with obtaining safe housing (in 9 States³⁰)
- Instruction on the special care needs of the infant (in 11 States³¹)
- Provision of infant safe-sleep information and ensuring safe-sleep arrangements in

the home (in 11 States³² and the District of Columbia)

- Child care or respite care (in 13 States³³)
- Vocational training for mothers seeking entry to the job market (in 5 States³⁴)
- Comprehensive and coordinated social services, including family therapy groups, parent-child therapy, and residential support groups (in 6 States³⁵)

MONITORING PLANS OF SAFE CARE

Laws, codes, or policies in 24 States³⁶ and the Port Gamble S'Klallam Tribe require the child welfare department to monitor the implementation of a POSC to ensure the specific action steps are completed. This includes ensuring that the family or caregiver is receiving the treatment and services required by the plan, and that the infant is safe and receiving appropriate care. Confirming the services identified in the POSC are implemented will ensure the ongoing health and substance use treatment needs of the infant and family are met. The POSC is updated as needed, as additional needs and service referrals are identified.

²⁷ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, Virginia, West Virginia, and Wyoming

²⁸ Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, West Virginia, and Wyoming

²⁹ Alabama, Colorado, Delaware, Georgia, Indiana, Kansas, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Virginia, West Virginia, and Wyoming

³⁰ Colorado, Connecticut, Missouri, New Jersey, North Carolina, North Dakota, Virginia, Washington, and Wyoming

³¹ Arkansas, Colorado, Connecticut, Delaware, Georgia, Indiana, Kansas, New Jersey, North Dakota, Virginia, and Wyoming

³² Arizona, Colorado, Georgia, Indiana, Iowa, New Jersey, North Carolina, North Dakota, Tennessee, Washington, and Wyoming

³³ Alabama, Arizona, Arkansas, Colorado, Connecticut, Georgia, Indiana, Maine, Missouri, New Jersey, Virginia, Washington, and Wyoming

³⁴ Colorado, Connecticut, Missouri, Virginia, and Wyoming

³⁵ Colorado, Illinois, New Jersey, Oregon, Washington, and Wyoming

³⁶ Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Missouri, Nevada, North Carolina, North Dakota, Oregon, Texas, Virginia, Washington, and West Virginia

Laws or policies in 12 States³⁷ require the child welfare department to collect data required to meet Federal and State reporting requirements. The data required by CAPTA, to the extent practicable, include the following:

- The number of infants identified as being affected by substance use, withdrawal symptoms, or FASD
- The number of infants for whom a POSC was developed
- The number of infants for whom referrals were made for appropriate services, including services for the affected family or caregiver

This publication is a product of the *State Statutes Series* prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of statutes, codes, regulations, agency policies, case law, and informal practices and procedures.

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³⁷ Alabama, Arkansas, Connecticut, Delaware, Nebraska, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Vermont, and Wyoming



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