

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

**Note:** This resource is up to date as of June 2025.

## 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 drug use during pregnancy 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 one state requires drug testing of pregnant and birthing patients in certain circumstances<sup>2</sup>**, and **only three 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 protect the therapeutic relationship and help patients maintain agency and confidentiality 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
- Documenting the medical reason for a drug test in the patient's chart
- Carefully considering what information is necessary to document in a medical chart

Providers can also help protect their patients from state violence and unjust family intervention by ensuring that their hospital or clinic reporting policies do not conflict with state laws on medical privacy.

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

If you have any additional questions about state reporting requirements, please contact If/When/How for technical assistance [here](#). For continuing education on the science and laws around prenatal substance exposure, as well as understanding the harms of the family policing system, 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 pregnant and postpartum people often experience state violence—from criminal investigations and prosecutions to forcible separation by the family policing system—as a result of unnecessary reports to the state. 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 family policing system (the “child welfare” 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 most families will not 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 provides funds for state agencies to address child abuse and neglect.<sup>5</sup> To receive these funds, CAPTA 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 and identified as “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 substance exposure. State policies vary, but states must have procedures for:

1. addressing the needs of each newborn identified as “affected by substance abuse or withdrawal symptoms, or a Fetal Alcohol Spectrum Disorder”;
2. notifying child welfare when a newborn has been so identified; and
3. ensuring the newborn’s safety and well-being following their release from health care providers by developing a Plan of Safe Care (“POSC”)<sup>6</sup>.

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The POSC is intended to do two things: address the health and treatment needs of the infant and their affected family or caregiver, and monitor whether local entities are delivering appropriate services to the infant and family. A POSC is different from a child protective services report. The POSC is a tool to ensure family care in support of the infant, and to hold local entities accountable for service provision. A POSC's development should be co-led by the birthing parent and their chosen support network, which may or may not include a medical provider.

**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.** Ideally, medical providers making a POSC notification should use a different phone number or online system than a state's abuse and neglect reporting portal,<sup>7</sup> but this isn't available in most states. States should use these notifications to track whether local entities are providing referrals to and delivery of appropriate services. 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 call for reporting beyond what the state laws below require.<sup>8</sup> If an institution encourages or requires overreporting, providers can advocate within their institutions to change these harmful policies. Numerous professional codes of ethics encourage medical providers to support their patients in this way.<sup>9</sup> If/When/How may be able to support you in this advocacy.

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

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

- Most state and hospital policies require mandatory reporters to *notify* the state “child protective services” department in certain circumstances involving prenatal substance exposure, including when creating a POSC. This is **NOT** a report of child abuse or neglect unless otherwise indicated in your state’s law, detailed below. Sometimes state law may use the word “report” when the practice is more like a notification. We have used context and analysis to determine when a state law using the word “report” should actually be treated as a notification pathway, and not a child abuse or neglect report. It is worth noting that state practices may change county to county. It’s also true that some states still use the notification pathway to investigate families, even when providers do not have concerns about a child’s safety.
- **This fact sheet does not cover general child abuse or neglect reporting statutes** unless they directly address substance use during pregnancy or substance-exposed 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 generally 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 or their metabolites in the body.
- Some states require a blood test for a newborn for the purpose of screening for congenital 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.
- 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 this standard can **contact If/When/How’s technical assistance providers**.

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## Alabama<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 of a newborn is **NOT** required by law.
- If a newborn is drug tested and the result is positive,<sup>11</sup> the state may require a child abuse report.<sup>12</sup>

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## Alaska<sup>13</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>14</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>15</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>16</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>17</sup>
  - This **does apply** to newborns medically impacted by cannabis use, unless the birthing parent was using cannabis as directed by a medical provider.<sup>18</sup>

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## Arkansas<sup>19</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 for an illegal substance, at the time of birth,<sup>20</sup> from either the birthing parent or infant does trigger a mandatory report to the Division of Child and Family Services (DCFS) provided the substance was “knowingly us[ed].”<sup>21</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.<sup>22</sup> However, the presence of these medications could still require a referral to DCFS. This referral is not a child abuse report under the law.

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## California<sup>23</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>24</sup>

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## Colorado<sup>25</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.
- Providers are required to report **only if**:
- The “child is born affected by alcohol or substance exposure,”<sup>26</sup> 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>27</sup>

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## Colorado

- Colorado does not further define “substance exposure” in statute. However, other mentions in Colorado statute of perinatal substance exposure refer to “controlled substances,” indicating that the state likely only considers a positive drug test of a newborn for “controlled substances” or alcohol to trigger a report. That list of substances **does not include** substance use disorder medications like buprenorphine when taken as recommended or prescribed and monitored by a licensed health care provider, or any other substance when taken as prescribed/recommended and monitored by a licensed health care provider.<sup>29</sup>

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## Connecticut<sup>30</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>31</sup>

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## Delaware<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.
- 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>33</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>34</sup>

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## Florida<sup>35</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>36</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>37</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>38</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>39</sup>

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## Hawai‘i<sup>40</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>41</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>42</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 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>44</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>45</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>46</sup>
  - Cannabis is **NOT** a controlled substance in Illinois law, and thus does **NOT** require a neglect report.

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## Indiana<sup>47</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 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.<sup>48</sup>
  - Under DCS child welfare policy,<sup>50</sup> substance use alone does not indicate child abuse or neglect.

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## Iowa<sup>51</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>52</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>53</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>54</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** trigger a child abuse or neglect report.<sup>55</sup>

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## Kentucky<sup>56</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>57</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 the provider also finds 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>58</sup>

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## Kentucky (continued)

- A provider is also required to notify child protective services if an infant is “affected by substance abuse withdrawal symptoms resulting from prenatal drug exposure or fetal alcohol spectrum disorder.”<sup>59</sup> This is not a child abuse report.<sup>60</sup>
- 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.<sup>61</sup>

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## Louisiana<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.
- Providers generally are **NOT** required by law to drug test a newborn.
- However, physicians **must** drug test a newborn less than 30 days old if the physician has “cause to believe” that the newborn was exposed *in utero* to an unlawfully used controlled substance.\*<sup>63</sup>
- Physicians **must** make a neglect report to the Department if a newborn
  - tests positive for an unlawfully used controlled substance,\*<sup>64</sup> or
  - exhibits symptoms of withdrawal or “other observable and harmful effects in his physical appearance or functioning,” which the physician has “cause to believe” are
    - due to “chronic or severe alcohol use” by the birthing parent during pregnancy or
    - symptoms of fetal alcohol spectrum disorder.<sup>65</sup>
- **\*Notable Exceptions:** Providers do **NOT** need to report use of prescribed medications, which include medications for opioid use disorder (MOUDs) like methadone or buprenorphine, as well as medical marijuana.<sup>66</sup>

However, a **physician must notify** the Department if a newborn exhibits symptoms of withdrawal or “other observable and harmful effects in [their] physical appearance or functioning” that the physician believes are due to the birthing parent’s use of a prescribed controlled substance during pregnancy. The notification *must be on the Department form* titled “Physician Notification of Substance Exposed Newborns; No Prenatal Neglect Suspected,” **not** through a call to the Department’s Child Protection Hotline.<sup>67</sup>

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## Maine<sup>68</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 **must** notify the Department of Health and Human Services when they identify the infant as
  - having been born affected by substance abuse,
  - having withdrawal symptoms due to prenatal drug exposure, or
  - having a fetal alcohol spectrum disorder.<sup>69</sup>

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## Maryland<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.
  - Providers do **NOT** need to report if a pregnant or birthing person merely tests positive for a controlled drug at the time of delivery,<sup>71</sup> as substance use during pregnancy does **not** constitute child abuse or neglect.<sup>72</sup>
- A drug test on a newborn is **NOT** required by law.
- Providers involved in the delivery or care of a newborn under 30 days old **must report** to a local department of social services if the newborn
  - tests positive for a controlled drug that was not prescribed,
  - is affected by or has withdrawal symptoms of prenatal exposure to a controlled drug,\* at the time of delivery, or
  - is affected by a fetal alcohol spectrum disorder at the time of delivery.<sup>73</sup>
  - After a provider reports to a local department of social services, the department will investigate the family.<sup>74</sup>
- **\*Exceptions:** A report is **NOT** required if a provider knows that
  - another individual within the institution has already made a report, **OR**
  - at the time of delivery, the birthing parent was using a controlled substance as currently prescribed, and the newborn does not display effects of withdrawal, fetal alcohol spectrum disorder, or substance abuse.<sup>75</sup>

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## Massachusetts<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.
- If a newborn is drug tested and the result is positive, a child abuse or neglect report is **NOT** required.<sup>77</sup>

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## Michigan<sup>78</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** if they know or have “reasonable cause to suspect,” based on a newborn’s symptoms, that the newborn has “any amount of alcohol, a controlled substance, or a metabolite of a controlled substance” in their body.\*<sup>79</sup>
- **\*Exceptions:**
  - A report is **NOT** required for substances attributable to medical treatment,<sup>80</sup> including medications for opioid use disorder (MOUDs) such as methadone or buprenorphine, as well as medical marijuana.

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## Minnesota<sup>81</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 provider involved in the health care of a person they know or have “reason to believe” used a controlled substance recreationally or engaged in “habitual or excessive” alcohol use while pregnant **must report only if** (1) the person does not continue to receive prenatal, postpartum, newborn, or other health care, **and** (2) the provider has been unable to get in contact with the person.<sup>82</sup>
- Providers are not required to investigate a parent or newborn in their care. However, physicians specifically must test a patient in their care who is:
  - a birthing person with an obstetric complication that medically indicates they used a controlled substance recreationally while pregnant, or
  - a newborn, if a medical assessment indicates that the birthing parent used a controlled substance recreationally while pregnant.<sup>83</sup>

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## Minnesota (continued)

- Testing must be performed by a lab meeting the requirements of § 181.953, with a test performed under the requirements of § 181.953(1).<sup>84</sup>
- Providers must report a positive test to the Department of Health. Reports of prenatal substance exposure are not child abuse or neglect reports.<sup>85</sup><sup>86</sup>

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## Mississippi<sup>87</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>88</sup>

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## Missouri<sup>89</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 controlled substance exposure, or
  - fetal alcohol spectrum disorder.<sup>90</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>91</sup>

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## Montana<sup>92</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.

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## Montana (continued)

- 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>93</sup> FDA-approved drugs are exempt from this requirement.
  - Marijuana is a schedule 1 drug making it a dangerous drug under Montana’s definition.
  - Though Methadone is a schedule 2 drug and Buprenorphine is a schedule 3 drug, making them dangerous drugs under Montana’s definition, they are both FDA-approved. This means an infant known to a provider to be affected by FDA-approved prescriptions of Methadone or Buprenorphine does not require a child abuse report.<sup>95</sup><sup>96</sup>

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## Nebraska<sup>97</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>98</sup>

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## Nevada<sup>99</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 exposure, or
  - a newborn has withdrawal symptoms from prenatal substance exposure.<sup>100</sup> This is not a child abuse or neglect report.<sup>101</sup>

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## New Hampshire<sup>102</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>103</sup>

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## New Jersey<sup>104</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.
- Providers **must report** to the New Jersey Department of Children and Families (DCF) if an infant is born “substance-affected,” meaning 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;
  - 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>105</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.
- Substance-affected infant reports are not child abuse or neglect reports<sup>106</sup> unless the provider specifies or alleges abuse.

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## New Mexico<sup>107</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-exposed does **NOT** trigger a mandatory report.<sup>108</sup>
- New Mexico law and courts have held that substance use during pregnancy alone does not indicate or prove child neglect.<sup>109</sup><sup>110</sup>
- In July 2025, the governor’s office and the Children, Youth & Families Department (CYFD) issued a directive which requires all birthing hospitals in the state to report fentanyl and methamphetamine-exposed newborns as well as those with FASD to CYFD before the newborn leaves the hospital. CYFD will then take the infant into custody for 72 hours while they determine whether the infant will remain in state custody. The directive also calls for the filing of a child abuse/neglect petition for each infant. While hospitals have been told to implement policies and procedures in line with this directive, there have been no changes to state law and the legality of the directive itself is unclear.

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## New York<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. Providers in New York City hospitals are required to obtain written consent before drug testing pregnant patients.<sup>112</sup>
- A drug test on a newborn is **NOT** required by law.
- If a newborn <sup>113</sup> is drug tested and the result is positive, a child abuse or neglect report is **NOT** required by state law.

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## North Carolina<sup>114</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>115</sup>
- 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>116</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>117</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law.
  - If a test is administered and the result is positive, the physician is **NOT** <sup>118</sup> required to report the results to DHHS.
- A drug test on a newborn is **NOT** required by law.
  - If a test is administered and the results are positive, a physician is **NOT** <sup>120</sup> required to report the results as neglect.<sup>120</sup>

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## North Dakota (continued)

- However, because the state has not updated its definition of neglect, a report may still be required by law when a provider knows or believes that a patient is pregnant and “has engaged in the abuse of a controlled substance or alcohol misuse during the pregnancy.” The provider must report the circumstances to the Department of Health and Human Services (DHHS).<sup>121</sup>
  - A report is not required if the patient agrees to enter treatment with a licensed program. The provider must report if they know of the patient’s “failure to complete voluntary treatment, continued use of controlled substance for nonmedical purpose, or failure to follow treatment recommendations.”<sup>122</sup>

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## Ohio<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.<sup>124</sup>
- 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>125</sup>
  - This required report does **NOT** apply to cannabis use unless the pregnant person is under 21.
  - 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>126</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>127</sup>
  - This **does include** prescribed medications like methadone and buprenorphine, as well as cannabis.<sup>128</sup>

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## Oregon<sup>129</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>130</sup> a child abuse or neglect report is **NOT** required by state law.

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## Pennsylvania<sup>131</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 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>132</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.
- Substance use during pregnancy does **NOT** constitute child abuse or neglect.<sup>133</sup>

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## Rhode Island<sup>134</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, a child abuse or neglect report is **NOT** required by state law on that basis alone.<sup>136</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.

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## South Carolina<sup>137</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.

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## South Carolina (continued)

- A report to South Carolina Department of Social Services is required **only if:**
  - Either the newborn or the birthing parent tests positive at birth for the presence of a controlled substance or a metabolite thereof, 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.
- South Carolina courts have upheld criminal convictions for abuse based on substance use during pregnancy, but have also acknowledged the weakness of the connection between substance use during pregnancy and harm to an infant.<sup>139</sup> Just because something can be considered child abuse by a court does not impact a medical professional's subjective decision as to whether or not substance use while pregnant with a viable fetus will result or actually resulted in reportable harm.

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## South Dakota<sup>140</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 the Division of Child Protection Services is **only required by law when** an infant "was subject to prenatal exposure to *abusive* use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed."<sup>141</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 prescribed.

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## Tennessee<sup>142</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.

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## Tennessee (continued)

- If a newborn tests positive for “illegal drugs,” the provider **must** file a child abuse report.<sup>143</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>144</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 substance or alcohol use during pregnancy **only if** the birthing parent:
  - Knew or should have known of the pregnancy, and
    - There is a diagnosis of Fetal Alcohol Syndrome, Fetal Alcohol Effect, or Neonatal Abstinence Syndrome;<sup>145</sup>
    - The “newborn was harmed from in utero exposure to alcohol or a controlled substance;”<sup>146</sup> or
    - The parent’s substance use during pregnancy “exposed the infant to loss or injury or endangered the infant’s emotional or physical health.”<sup>147</sup>
    - Actual injury to an infant is not required for a report, but medical providers have discretion to determine whether the substance use during pregnancy was substantial or severe enough to endanger a born infant.<sup>148</sup>
- A report is **NOT** required for use of lawfully prescribed substances when used as prescribed.<sup>149</sup>

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## Utah<sup>150</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.

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## Utah (continued)

- 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 exposure,
  - has fetal alcohol syndrome (or fetal spectrum disorder), or
  - demonstrates drug or alcohol withdrawal symptoms.<sup>151</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>152</sup>
- This reporting requirement does **not** apply to prescribed medications when used as prescribed, such as methadone, buprenorphine, or medical cannabis.<sup>153</sup>

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## Vermont<sup>154</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>155</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law, however, providers who deliver prenatal care are required to “implement a medical history protocol for screening pregnant women for substance abuse to determine the need for a specific substance abuse evaluation.”<sup>156</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.
- 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 abuse 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, disease, or condition attributable to “maternal abuse of a controlled substance during pregnancy” or newly diagnoses a child with fetal alcohol syndrome.<sup>158</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>159</sup>
- This reporting requirement **does include** a newborn experiencing “withdrawal symptoms” from prescribed medications like methadone, buprenorphine, or medical marijuana.

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## Washington<sup>160</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.<sup>161</sup>

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## Washington D.C. (District of Columbia)<sup>162</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.
- Providers are **required** to report to the Child and Family Services Agency if a child, under a year old, is diagnosed with Fetal Alcohol Spectrum Disorder.<sup>163</sup>
- A neglect report is **required** if an infant is “born addicted or dependent on a controlled substance or has a significant presence of a controlled substance” in their body at birth.<sup>164</sup>
  - This would not include situations related to the use of any prescribed medications such as medical marijuana, methadone, or buprenorphine.<sup>165</sup>

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## West Virginia<sup>166</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 an “illegal drug”, a provider **must** make a child abuse report to the West Virginia Department of Health and Human Resources.<sup>167</sup>

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## West Virginia (continued)

- This requirement does **NOT** include the use of prescribed medications such as medical marijuana, methadone, or buprenorphine if taken as prescribed.

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## Wisconsin<sup>168</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. In Wisconsin, informed consent prior to testing “an expectant mother” is **required** under the law.<sup>169</sup>
- If a pregnant person is drug tested and the result is positive, a child abuse report is **NOT** required by law.<sup>170</sup>
- If a newborn is drug-tested and the result is positive, a child abuse report is required by state law **only if** there is:
  - A diagnosis of Fetal Alcohol Spectrum Disorder; or
  - “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>172</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>173</sup>

- A drug test on a pregnant or birthing person is **NOT** required by law, however, state law requires universal drug screening, and positive tests for the pregnant person or the newborn trigger a POSC notification.
  - 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.<sup>175</sup>

## Citations

1. The reporting requirements described in this fact sheet are limited to requirements around prenatal substance 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
3. Louisiana, Minnesota, 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*, FIJ Quarterly 39-49 (Spring 2022); see generally Dorothy E. Roberts, *Torn Apart* (2022).
5. See Pregnancy Just., *Understanding CAPTA and State Obligations* (2020), <https://perma.cc/5XCU-ZRMU>.
6. Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(ii-iii) (2019).
7. Colo. Coal. to Protect Child. & Fam. Rights, *Model flowchart for a CAPTA compliant notification*, <https://perma.cc/8Y6B-5SK8> (last visited Dec. 10, 2025).
8. 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).

## Citations

9. See, e.g., Nat'l Ass'n of Soc. Workers, *Code of Ethics* §§ 3.07(d), .09(b)-(d) (2021), <https://perma.cc/7MCQ-5LC5> ("Social workers should work to improve employing agencies' policies and procedures and ... should not allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work."); Am. Nurses Ass'n, *Code of Ethics for Nurses* § 3.5 (2025), <https://perma.cc/43DD-3RY3> ("When practices threaten the welfare of the patient, nurses express their concern to the responsible manager or administrator and escalate as indicated."); Am. Nurses Ass'n, *Code of Ethics for Nurses* § 4.3 (2025), <https://perma.cc/QAR9-E882>. ("[W]hen ethical problems have their roots in social disadvantage or political movements, nurses use their education and knowledge to influence change through professional collaboration and advocacy."); Int'l Council of Nurses, *The ICN Code of Ethics for Nurses* §§ 2.10, 3.5, 4.5 (2021), <https://perma.cc/5LN4-NSTD> ("Nurses contribute to positive and ethical organisational environments and challenge unethical practices...."); Am. Med. Ass'n, *Code of Medical Ethics* § 11.2.7 (2025), <https://perma.cc/L8NR-3RMU> ("Within their institutions, ... physicians should collaborate with colleagues to promote change. They should ... [i]dentify institutional policies and practices that perpetuate or create barriers to equitable care [and] [p]articipate in designing and supporting well-considered strategies for change to ensure equitable care for all."); Am. Pub. Health Ass'n, *Public Health Code of Ethics* §§ 1, 2.C (2019), <https://perma.cc/BMJ8-BLAW> ("More direct systemic, institutional ... influences shape the ethical conduct of public health practitioners. These factors must be addressed head on and met with strategic efforts at organizational change...."); NAADAC, Ass'n for Addiction Professionals, *Code of Ethics* § III-48 (2025), <https://perma.cc/84KH-SZV7> ("Addiction professionals who become aware of inappropriate, illegal, discriminatory, and/or unethical policies, procedures and practices at their agency, organization, or practice shall alert their employers. When there is potential for harm to clients..., providers shall seek supervision and/or consultation to determine appropriate next steps and further action.").

10. Ala. Code § 26-14-3.

11. 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. Alabama Code § 26-15-3.3 was added in 2016. This law exempts a pregnant person from prosecution and exempts providers from the requirement to report a substance-exposed infant if: 1) exposure was to a prescription medication taken as prescribed OR 2): exposure was to a non-prescription medication taken as directed by an authorized healthcare provider.

## Citations

12. 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. See Ala. Child Protective Servs., Child Abuse/Neglect (CA/N) Allegations and Definitions (Sept. 2023), <https://perma.cc/Y6PY-7QH3>. The Department of Human Resources also considers "Fetal Alcohol Syndrome or drug withdrawal at birth due to the mother's substance use or misuse" to be physical abuse. Ala. Admin. Code r. 660-5-34-.02(3)(a)(10).
13. Alaska Stat. § 47.17.020.
14. Alaska Stat. § 47.17.024.
15. Ariz. Rev. Stat. § 13-3620(E).
16. Ariz. Rev. Stat. § 13-3401. This list of drugs is available at <https://perma.cc/C2VC-RC4G>.
17. Ariz. Rev. Stat. § 8-201(25)(c).
18. See *Ridgell v. Ariz. Dep't of Child Safety*, 508 P.3d 1143 (Ariz. Ct. App. 2022), which found that a parent's use of medical marijuana during pregnancy, originally prescribed for symptoms of irritable bowel disease (IBS), did not constitute neglect even though her current nausea stemmed from hyperemesis gravidarum and not IBS. This case indicates that patients with a medical marijuana card in Arizona may use marijuana during pregnancy to treat symptoms authorized under their medical marijuana card, regardless of symptom origin. It also underscores that authorized medical marijuana use during pregnancy is not neglect.
19. A.C.A. §§ 12-18-402 (mandatory reporting of child maltreatment), 9-27-303(37)(B) (defining neglect to include prenatal substance use).
20. A.C.A. § 12-18-103(14)(B) (defining neglect to include "knowingly using" an illegal substance while pregnant, but excluding prescription substances). Additionally, if an infant is "born with and affected by: (A) A fetal alcohol spectrum disorder; (B) Maternal substance abuse resulting in prenatal drug exposure to an illegal or a legal substance; or (C) Withdrawal symptoms resulting from prenatal drug exposure to an illegal or a legal substance," the provider is required to make a referral to DCFS. A.C.A. § 12-18-310.
21. Ark. Dep't of Hum. Servs., Div. of Child. & Fam. Servs., PUB-357, *Child Maltreatment Assessment Protocol* 35 (2013), <https://perma.cc/EA7A-H6T6>.
22. A.C.A. § 9-27-303(37)(B)(ii).
23. Cal. Penal Code § 11166.
24. Cal. Penal Code § 11165.13. The section also states "[h]owever, 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." *Id.*
25. Colo. Rev. Stat. §§ 19-3-304 (persons required to report abuse), -102(1)(g) (defining neglected or dependent child).

## Citations

26. The Colorado Supreme Court has found that an infant's positive test for a controlled substance is evidence that they are affected by exposure as required by the first prong. The second prong still requires additional considerations, beyond a positive test, before triggering a report. *B.C.B. v. A.B. (People ex rel. B.C.B.)*, 569 P.3d 74 (Colo. 2025).
27. Colo. Rev. Stat. § 19-1-103(1)(a)(VII) (emphasis added).
28. Colo. Rev. Stat. § 19-1-129(1).
29. Colo. Rev. Stat. § 18-18-102(5).
30. Conn. Gen. Stat. § 17a-101a.
31. Conn. Gen. Stat. §17a-102a. See also Margaret Lloyd Sieger et al., *Novel Implementation of State Reporting Policy for Substance-Exposed Infants*, 12(10) Hosp. Pediatrics 841 (2022).
32. 16 Del. C. §§ 903 (when reporting is required), 902B (definition of infant with prenatal substance exposure).
33. "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." 16 Del. C. § 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."
34. State of Del., *Plan of Safe Care Implementation Guide: For Infants with Prenatal Substance Exposure and their Families* 7 (2019), <https://perma.cc/D2ZN-ZV3Q>.
35. Fla. Stat. § 39.201.
36. Fla. Stat. § 39.01(34)(g)(1).
37. O.C.G.A. §§ 19-7-5 (reporting abuse), 15-11-2(2) (defining abuse to include prenatal abuse).
38. O.C.G.A. § 15-11-2(56).
39. Use of marijuana while pregnant is not prenatal abuse as marijuana is not a controlled substance under Georgia law. See *C.W. v. Dep't of Hum. Servs.*, 836 S.E.2d 836, 837 (Ga. Ct. App. 2019).
40. HRS § 350-1.1.
41. Idaho Code § 16-1605.
42. 325 Ill. Comp. Stat 5/4.
43. 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.
44. 705 Ill. Comp. Stat. 405/2-3(1)(c) (definition of neglect includes infant who tests positive for controlled substances); 89 Ill. Adm. Code 300 Appx. B15/65 (Option C) (defining child abuse and neglect allegations).
45. 89 Ill. Adm. Code 300 Appx. B 15/65 (Option B).

## Citations

46. 89 Ill. Adm. Code 300 Appx. B 15/65 (Option C, Note).
47. Ind. Code Ann. § 31-33-5-1.
48. Ind. Code Ann. § 31-34-1-10 to -13. 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.”
49. A report is not required at all 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 applies to legend drugs and controlled substances. Ind. Code Ann. § 31-34-1-12 to -13.
50. DCS considers drug screening when there is an indication that substance use may be a factor in abuse/neglect. *See* Ind. Dep’t of Child Servs., *Drug Screening in Assessments*, in *Ind. Child Welfare Pol’y Manual* (May 2022), <https://perma.cc/SB5X-ZQND>.
51. Iowa Code § 232.69 (mandatory reporter requirements).
52. Iowa Code § 232.77(2)(a) (reporting of test results), *see also* § 232.68(2)(6) (defining “abused child” to include prenatal substance exposure).
53. Iowa Code § 232.77(2)(b).
54. Kan. Stat. Ann. § 38-2223.
55. As of January 2025, Kansas Administrative Regulations § 30-46-10 no longer defines withdrawal symptoms resulting from prenatal exposure as possible neglect.
56. Ky. Rev. Stat. §§ 620.030 (duty to report), 214.160(4) (considering factors in addition to test result).
57. Ky. Rev. Stat. § 214.160(7).
58. Ky. Rev. Stat. § 600.020 (1)(a)(3).
59. Ky. Rev. Stat. § 214.160(5).
60. The code section says “report,” but it cites federal code 42 U.S.C.S. § 5106a. 42 U.S.C.S. § 5106a only requires a “Plan of Safe Care” and a notification to the state child protective services agency. The federal law is clear that a notification is not the same as a child abuse report.
61. *See* Ky. Rev. Stat. § 218A.010(28)(h) (marijuana does not include medical cannabis); 902 Ky. Admin. Regs. 55:015E § 1(3)(b) (if a drug is exempt from the definition of marijuana, then it is not a Schedule 1 substance).

## Citations

62. La. Child Code Ann. arts. 609 (reporting requirement), 610(G) (reporting procedure).
63. La. Child Code Ann. art. 610(G)(1); La. Dep’t of Child. & Fam. Servs., *Substance Exposed Newborns Reporting and Notifications*, <https://perma.cc/H3B3-UWZX> (last visited May 14, 2025) (defining “newborn” as “a child who is not more than 30 days old”).
64. La. Child Code Ann. art. 610(G)(1).
65. La. Child Code Ann. art. 610(G)(2).
66. La. Child Code Ann. art. 603 (defining child neglect).
67. La. Stat. Ann. § 40:1086.11 (notification for effects of prescribed controlled substances); La. Admin. Code tit. 67, § 1135 (notification process).
68. Me. Stat. tit. 22, §§ 4004-C(1)-(2) (Department’s response to a substance-affected infant notification), 4011-C (substance-affected infant notification requirement) (2025). Note that Maine repealed its existing substance-affected infant notification requirement in September 2025. Under the new law, the Department is no longer required to respond to notifications by investigating whether an infant is abused or neglected.
69. Me. Rev. Stat. tit. 22, § 4011-C(1)-(2). Note that this is not a child abuse or neglect report.
70. Md. Code Ann., Fam. Law §§ 5-704 (general abuse and neglect reporting requirement); 5-704.2 (substance-exposed newborn reporting requirement).
71. See 2018 Md. HB 1744 (enacted May 8, 2018) (eliminating requirement to report a birthing parent for substance use).
72. Md. Code Ann., Fam. Law § 5-704.2(i); see also Md. Dep’t of Hum. Servs., *Signs of Neglect or Abuse*, <https://perma.cc/6BST-9HWH> (last visited Sept. 10, 2025); *Kilmon v. State*, 905 A.2d 306, 314 (2006) (finding that legislative history “shows rather clearly that” a pregnant person’s use of a controlled dangerous substance does not constitute reportable child abuse or neglect).
73. Md. Code Regs. 07.02.08.03 (provider must be involved in delivery or care of newborn to make a report), 07.02.08.01 (defining “newborn”); Md. Code Ann., Fam. Law §§ 5-704.2(a) (defining “newborn”), 5-704.2(b) (conditions requiring a report).
74. Md. Code Reg. 07.02.08.05 (requiring a departmental assessment within 48 hours).
75. Md. Code Ann., Fam. Law § 5-704.2(e) (statute listing exceptions); Md. Code Regs. 07.02.08.03(C) (regulation listing exceptions).
76. Mass. Gen. Laws ch. 119, § 51A.

## Citations

77. Mass. Gen. Laws ch. 119, § 51A. Massachusetts' reporting law was amended in 2024 to explicitly say that a newborn's substance exposure is not sufficient, on its own, to trigger a child abuse or neglect report: "an indication of prenatal substance exposure shall not solely meet the requirements of this section." This amendment also required administrative agencies to prepare new regulations detailing requirements for health care providers when caring for pregnant people and newborns affected by substance use. These regulations - not available at the time this report was published - will likely reflect the requirement for a CAPTA notification, but note that some states confusingly use the language "report" to indicate a CAPTA notification. In the meantime, the Massachusetts Department of Children and Families guidance may not accurately reflect the 2024 amendment. *See, e.g.*, Mass. Dep't of Child. & Fams., *Child Abuse and Neglect Reporting: A Guide for Mandated Reporters* (2016), <https://perma.cc/Q95A-WHGA>.

78. Mich. Comp. Laws § 722.623a.

79. Mich. Comp. Laws § 722.623a.

80. Mich. Comp. Laws § 722.623a; *see also* Mich. Dep't of Health & Hum. Servs., *Mandated Reporters of Abuse and Neglect* 15 (Sept. 2023), <https://perma.cc/79WC-TB6N>.

81. Minn. Stat. §§ 260E.03 (defining "neglect"), 260E.31 (reporting requirement for prenatal controlled substance exposure), 260E.32 (testing requirement for prenatal controlled substance exposure).

82. Minn. Stat. § 260E.31.

83. Minn. Stat. § 260E.32.

84. Minn. Stat. § 260E.32(4).

85. Minn. Stat. § 260E.32.

86. Minn. Dep't of Hum. Servs., *Minnesota's Best Practice Guide for Responding to Prenatal Exposure to Substance Use* 7 (Oct. 2020), <https://perma.cc/8WDW-QMVD>.

87. Miss. Code Ann. §§ 43-21-353 (general child abuse and neglect reporting requirement), -105 (definitions).

88. *See, e.g.*, Miss. Dep't of Child Protection Servs., *Child Abuse Prevention*, <https://perma.cc/MHR7-J6LQ> (last visited Sep. 24, 2025) (not listing substance use as a common indicator of child abuse or neglect).

89. Mo. Rev. Stat. § 191.737(1)-(2).

90. Mo. Rev. Stat. § 191.737(2) (requiring medical documentation of controlled substance or alcohol exposure at birth or a positive toxicology test for a controlled substance).

91. Mo. Rev. Stat. § 1.205; *see also* *State v. Wade*, 232 S.W.3d 663, 666 (Mo. Ct. App. W. Dist. 2007).

92. Mont. Code Ann. § 41-3-201.

93. "Affected by" is not further defined in this code section.

94. Mont. Code Ann. § 41-3-201(3) (reporting infant affected by dangerous drug). "Dangerous drug" refers to a drug, substance, or immediate precursor in Schedules I through V. Mont. Code Ann. § 50-32-101(6).

## Citations

95. Mont. Code Ann. § 50-32-101(7)(b).
96. U.S. Food & Drug Admin., *Information about Medications for Opioid Use Disorder (MOUD)* (last visited Oct. 2, 2025), <https://perma.cc/99G5-D3B4>. However, this infant would still require a Plan of Safe Care, which necessitates a notification to the child protective services agency.
97. Neb. Rev. Stat. §§ 28-710 (definitions), -711 (general child abuse and neglect reporting requirement).
98. "Substance use alone does not indicate abuse or neglect." Neb. Dep't of Health & Hum. Servs., *Child Abuse*, <https://perma.cc/EE67-3GU8> (last visited Sep. 29, 2025).
99. Nev. Rev. Stat. Ann. §§ 432B.220 (persons required to report abuse or neglect), 432B.330(4) (child may be in need of protection if affected by prenatal substance or alcohol exposure).
100. Nev. Rev. Stat. Ann. § 432B.220(3).
101. "[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).
102. N.H. Rev. Stat. Ann. § 132:10-f.
103. A New Hampshire Supreme Court case from 2023 found that an infant diagnosed with Neonatal Abstinence Syndrome was an "abused child," because the state's definition of abused child includes physical injury by nonaccidental means. The Court held that this can include a parent's substance use during pregnancy. *In re J.P.S.*, 300 A.3d 247 (N.H. 2023). However, this case has not changed provider reporting requirements.
104. N.J. Stat. Ann. §§ 9:6-8.10, .21(c).
105. N.J. Admin. Code § 3A:26-1.2 (definitions) (enumeration omitted). In August 2025, DCF proposed changes to this regulation that would narrow this reporting requirement. The proposed regulation would require confirmation testing after a presumptive positive result from a toxicology screen and de-identify substance-affected infant notifications. The regulation would also emphasize services over surveillance and eliminate the requirement that DCF be directly involved with families that do not present child abuse or neglect concerns. 2025 NJ Regulation Text 24017. If/When/How strongly supports this proposed regulation.
106. 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. Dep't of Child. & Families v. A.L.*, 59 A.3d 576, 580 (N.J. 2013).
107. N.M. Stat. Ann. § 32A-4-3.
108. While a notification is required when an infant is born substance-exposed, it is not a child abuse or neglect report. N.M. Stat. Ann. § 32A-4-3(l).

## Citations

109. "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." N.M. Stat. Ann. § 32A-4-3(G).

110. *See State of N.M. ex rel CYFD v. Amanda H.*, 2007-NMCA-029, 141 N.M. 299, 305, 154 P.3d 674, 680 ("[A]n 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.").

111. N.Y. C.L.S. Soc. Serv. § 413.

112. Yasmeen Khan, *NYC Will End Practice of Drug Testing Pregnant Patients Without Written Consent*, Gothamist, Nov. 17, 2020, <https://perma.cc/R42P-VTCW>.

113. 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). N.Y. Dep't of Health, Off. of Addiction Servs. & Supports, *Screening and Testing for Substance Use in Pregnancy* 3 (Apr. 2025), <https://perma.cc/3AHE-FUGX>.

114. N.C. Gen. Stat. § 7B-301.

115. N.C. Dep't of Health & Hum. Servs., *North Carolina Requirement to Notify Child Protective Services (CPS) of Substance Affected Infant*, DSS-1403 [Rev. 7/2017], <https://perma.cc/8FWP-BNUQ>.

116. N.C. Dep't of Health & Hum. Servs., *North Carolina Requirement to Notify Child Protective Services (CPS) of Substance Affected Infant*, DSS-1403 [Rev. 7/2017], <https://perma.cc/8FWP-BNUQ>.

117. N.D. Cent. Code §§ 50-25.1-03 (persons required to report abuse or neglect), -02(20)(f) (defining "neglected child").

118. In 2025, S.B. 2232 made formerly mandatory toxicology testing and reporting requirements voluntary instead. So providers are no longer required by law to test a parent or an infant. If they do test, they are not required to report a positive result. However, prenatal substance exposure remains a part of the state's definition of "neglected child," which would normally require a report. The state has not issued guidance on this ambiguity. Providers may wish to consult an attorney on this issue.

119. N.D. Cent. Code, § 50-25.1-17(1).

120. N.D. Cent. Code § 50-25.1-17(2).

121. N.D. Cent. Code § 50-25.1-16(1). Note that "abuse of a controlled substance" is not further defined in law and therefore subject to provider discretion. Marijuana, buprenorphine, and methadone are all controlled substances in North Dakota. The use of prescribed medications taken as directed would likely not be considered "abuse."

122. N.D. Cent. Code § 50-25.1-16(2).

## Citations

123. Ohio Admin. Code 5101:2-1-01(B)(314) (defining substance-affected infant); Ohio Rev. Code Ann. § 2151.031 (defining abused child); Ohio Rev. Code Ann. § 2151.421 (describing reporting requirements). *See also* Ohio Admin. Code 5101:2-36-03(S) (describing screening process for a “public children’s service agency” in cases of a substance-affected infant). This law indicates that most substance-affected infant reports will be screened out provided the health care provider doesn’t have any safety concerns, but practice may vary.

124. If a health care provider is treating a pregnant person for any conditions related to pregnancy before the 20th week of pregnancy, and has reason to believe a pregnant person has used or is using a controlled substance “in a manner that may place the woman’s fetus in jeopardy” they are required to encourage the pregnant person to attend drug treatment. Ohio Rev. Code Ann. § 3701.59. Though Ohio law does not specifically require a report after a positive drug test for a pregnant person, Ohio Department of Children and Family Services interprets Ohio law to require a report in that instance. We read this as an incorrect interpretation of Ohio law. *See also Schill v. Lake Cnty. Dep’t of Job & Fam. Servs.*, 2024 U.S. Dist. LEXIS 57097 at \*11 (N.D. Ohio, E. Div. Mar. 29, 2024) (concluding that a medical professional had a “clear legal duty under Ohio law” to report a positive drug test on a pregnant person even though the infant’s test was negative, but this conclusion is dicta - meaning it is non-binding).

125. *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 as long as the pregnant person is 21 or older, or to buprenorphine or methadone if taken as prescribed (legal treatments for substance use disorder). *See also* Ohio Admin. Code § 5101:2-1-01(314) (defining “substance affected infant” and implying that “in utero exposure to a legal or illegal substance” means a child may be “abused”, but specifically exempting substances that are prescribed).

126. Okla. Stat. tit. 10A, § 1-2-101 (establishing general mandatory reporting requirements).

127. Okla. Stat. tit. 10A, § 1-2-101(B)(3); *see also* Okla. Admin. Code § 340:75-3-120(14) (defining “drug-endangered child” and referring back to the mandatory reporting requirement).

## Citations

128. While healthcare providers are required to report an infant testing positive for marijuana, methadone, and buprenorphine, an Oklahoma court held that an automatic finding of child neglect may not be applied to a pregnant person whose use of that drug was “legal as to” the pregnant person. *State v. Aguilar*, No. S-2023-575, 2024 LEXIS 17, at \*6 (Okla. Crim. App. 2024) (declining to apply child neglect laws where the pregnant person’s use of a controlled substance is legal, and specifically where the pregnant person uses marijuana under a medical license). *See also State v. Green*, 474 P.3d 886, 893 (Okla. Crim. App. 2020) (holding that a viable fetus is a “child” for the purposes of the child neglect statute specifically and only concerning neglect that causes a child’s death from “illegal” substance use by the pregnant person).

129. Or. Rev. Stat. § 419B.005(6) (defining “public or private official” to include health care providers); Or. Rev. Stat. § 419B.007 (naming “public or private officials” as mandated reporters when they come into contact with a child they have “reason to believe has suffered abuse”); Or. Admin. R. 413-015-0115(33) (defining “infant with prenatal substance exposure”); Or. Admin. R. 413-080-0050(32) (defining “substance-affected infant” for the purposes of a Plan of Safe Care).

130. 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.”).

131. 23 Pa. Cons. Stat. §§ 6311 (general mandatory reporting requirement), 6386 (requiring notification in the event a “child is born affected by 1) substance use or withdrawal symptoms resulting from prenatal drug exposure, or 2) a Fetal Alcohol Spectrum Disorder”; establishing that a notification does not constitute a child abuse report).

132. 23 Pa. Cons. Stat. § 6386(a).

133. 23 Pa. Cons. Stat. § 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).

134. 40 R.I. Gen. Laws § 40-11-6 (establishing general mandatory reporting requirement).

135. The Rhode Island Department of Child, Youth, and Families’ (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. Dep’t of Child., Youth, & Fams., *Infant Plans of Safe Care Guidance Document 3* (June 2018).

## Citations

136. Rhode Island's resources for both pregnant people who use substances and their health care providers appear to be supportive of the conclusion that an infant born affected by substances will not automatically result in DCYF involvement, even though a POSC is always required. Prevent Overdose RI, *Perinatal Substance Use Trifold Brochure*, <https://perma.cc/T59M-PLVL> (last visited Dec. 10, 2025) (for pregnant people who use substances); State of R.I. Dep't of Child., Youth & Fams., *Circle of Safe Care Plan* (June 16th, 2025), <https://perma.cc/K6ZM-RJXZ> (for health care providers). However, state law includes CAPTA notification language that uses the word "report" instead of notification, which may be confusing for providers. R.I. Gen. Laws § 40-11-6(a) ("When any physician, duly certified registered nurse practitioner, or other healthcare provider is involved in the delivery or care of infants born with, or identified as being affected by, substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder ... he or she shall report the incident....").

137. S.C. Code Ann. §§ 63-7-310 (persons required to report), -1660(F) (noting that courts will presume a child abused or neglected if 1) the mother or child tests positive for a controlled substance at birth; 2) the child is diagnosed with Fetal Alcohol Syndrome; 3) another of the mother's children or the mother tested positive for a controlled substance at their birth; or 4) another of the mother's children was diagnosed with Fetal Alcohol Syndrome). A presumption of child abuse or neglect under § 63-7-1660(F) may be rebutted by proof that a suitable adult may provide care for the child. Though this statute is directed at court proceedings, because the first two requirements are repeated in the South Carolina Department of Social Services guide for mandatory reporters, we believe this is sufficient to show the state intends medical providers to report only in circumstances 1 and 2, or when medical providers otherwise reasonably believe a child will be harmed by the pregnant person's substance use.

138. South Carolina's guide for mandated reporters also encourages a report when a pregnant person is using "an illegal substance" while pregnant with "a viable fetus" if "the professional has a reasonable belief that the mother's actions are causing harm or pose a substantial risk of harm to a viable fetus." This requirement is not included in South Carolina's law. See *Childs. L. Ctr.*, Univ. of S.C. Sch. of L., Mandated Reporter Guide (June 2018), <https://perma.cc/P68H-JE6A>. Note that a South Carolina court held that a person must know they are pregnant in order for their conduct while pregnant to "serve as a basis for a finding of abuse or neglect[.]" *S.C. Dep't of Soc. Servs. v. Jennifer M.*, 744 S.E.2d 591, 599 (S.C. Ct. App. 2013).

## Citations

139. *Whitner v. State*, 492 S.E.2d 777 (S.C. 1997) (holding that the word "child" as used in South Carolina's child abuse and neglect statutes includes viable fetuses specifically as it concerns cocaine use while pregnant with a viable fetus); *see also State v. McKnight*, 576 S.E.2d 168 (S.C. 2003) (holding that cocaine ingestion that caused the death of a stillborn child was homicide by child abuse).

140. S.D. Codified Laws §§ 26-8A-2, -37.

141. S.D. Codified Laws § 26-8A-2(9) (defining child abuse) (emphasis added); § 26-8A-35 (newborn's positive toxicology test for a controlled substance requires a report). Though § 26-8A-35 states that a newborn's positive test for a controlled substance requires a report, the referenced report is pursuant to § 26-8A-8, which explicitly exempts substances from the child abuse definition if they are lawfully prescribed.

142. Tenn. Code Ann. §§ 37-1-102(b)(1) (defining abuse, which includes neglect), (b)(20) (clarifying that neglect "does not exist solely on the basis of economic disadvantage"), 30-1-403 (requiring mandatory reporting of child abuse and neglect).

143. 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 when lawfully prescribed. *See* Tenn. Code. Ann. § 29-38-104(1).

144. Tex. Fam. Code Ann. § 261.101 (mandatory reporting requirement).

145. 40 Tex. Admin. Code § 707.455(a)(1).

146. 40 Tex. Admin. Code § 707.455(b)(2)(B).

147. 40 Tex. Admin. Code § 707.467(d). Note that the law defines endangered as including, but not limited to: "evidence the mother extensively used alcohol or regularly or extensively used a controlled substance over the course of the pregnancy or in close proximity to the child's expected birth date, evidence that the mother has an alcohol or drug addiction, or evidence that the infant was in immediate danger of harm from the mother's use of alcohol or a controlled substance."

148. 40 Tex. Admin. Code § 707.467(d)(2).

149. 40 Tex. Admin. Code § 707.467(d)(2).

150. Utah Code Ann. § 80-2-603 (reporting requirements specific to substance use during pregnancy); Utah Admin. Code r. 512-80-2(2) (defining "abuse" to include "fetal exposure to alcohol or other harmful substances").

151. Utah Code Ann. § 80-2-603(2)(a).

152. Utah Code Ann. § 80-2-603(2)(b).

153. Utah Code Ann. § 80-2-603(1)(d)(ii).

154. Vt. Stat. Ann. tit. 33, §§ 4912 (defining "abused or neglected child" and other definitions relevant for mandatory reporters), 4913 (defining mandated reporters and their requirements).

## Citations

155. Va. Code Ann. § 63.2-1509 (defining mandated reporters and their requirements).
156. Va. Code. Ann. § 54.1-2403.1.
157. Va. Admin. Code. § 40-705-40(A)(6)(a) ("For purposes of this regulation, 'affected by substance abuse' is a determination by a health care professional and may be determined by clinical indicators that include maternal and infant presentation at birth; substance use and medical histories; and include toxicology study results of the infant that are positive for illegal substances or indicate abuse of controlled substances.").
158. Va. Code Ann. § 63.2-1509(B); Va. Admin Code. § 40-705-40(A)(6).
159. Va. Code Ann. § 63.2-1509(B); Va. Admin. Code § 40-705-40(A)(6).
160. Wash. Rev. Code § 26.44.030 (defining mandated reporters and their requirements). Note that the Washington Department of Children, Youth, and Families developed their own definitions for both substance-exposed and substance-affected newborns. These definitions are not state law, but do govern state agency actions. See Wash. Dep't of Child., Youth, & Fams., *Policies and Procedures Appendix A: Definitions*, <https://perma.cc/AK6C-37TW> (last visited Nov. 17, 2025).
161. Washington state law does not explicitly require a report when a newborn is substance-exposed or substance-affected, though CAPTA notification requirements still apply to the latter. However, the Washington State Department of Children, Youth, and Families interprets federal law to require a report in cases where a newborn is substance-exposed - though language also indicates they may not interpret exposure due to medications for opioid use disorder (MOUD) as reportable. Providers ultimately have discretion as to whether or not to report based on their concerns for a newborn's safety, and filling out a POSC using the online portal will also direct providers to report in certain circumstances. See Wash. Dep't of Child., Youth, & Fams., *Plan of Safe Care: Role of Health Care Providers*, <https://perma.cc/4SDQ-FAKH> (last visited Nov. 17, 2025); Wash. Dep't of Health, *State agencies announce changes in policy and best practices for infants and parents affected by substance use at birth*, <https://perma.cc/YF8N-U9XD> (last visited Nov. 17, 2025).
162. D.C. Code Ann. § 4-1321.02 (defining mandatory reporters and their responsibilities).
163. D.C. Code § 4-1321.02(d).
164. D.C. Code § 16-2301(9)(A)(viii).
165. D.C. Code § 16-2301(36) (defining a "controlled substance" as one that has "not been prescribed by a physician").
166. W. Va. Code §§ 49-1-201 (defining child abuse and neglect, along with other definitions relevant to mandatory reporting), -2-803 (defining mandated reporters and their responsibilities).

## Citations

167. See *In re A.L.C.M.*, 801 S.E.2d 260, 262 (W. Va. 2017) (holding that “when a child is born alive, the presence of illegal drugs in the child’s system constitutes sufficient evidence that the child is an abused and/or neglected child...”).

168. Wis. Stat. §§ 48.02(1)(am) (defining abuse), 48.981(2) (defining who is required to report, and establishing only permissive reporting for abuse concerning an “unborn child” in 2d), 146.0255 (requirements for physicians that drug test an “expectant mother” or infant), 146.0257 (evaluations for fetal alcohol spectrum disorder).

169. Wis. Stat. § 146.0255(2).

170. Wis. Stat. § 48.981(2)(d) (establishing that reporting abuse of “an unborn child” is permissive, not mandatory); *see also* Wis. Dep’t of Child. & Fams., *Child Protective Services Access & Initial Assessment Standards* 15 (Sep. 2025), <https://perma.cc/8JHJ-UGMA>.

171. Wis. Stat. § 146.0257(2).

172. Wis. Stat. § 48.02(1)(am). A “severe degree” is not further defined in statute.

173. Wyo. Stat. Ann. §§ 14-3-202(ii) (defining child abuse), 14-3-202(vii) (defining neglect); 14-3-205 (outlining mandated reporting obligations), 35-2-1401 (explaining requirements for a POSC); 049-0035-1 Wyo. Code. R. §§ notification procedures).

174. 049-0035-2 Wyo. Code R. § 1(a) (“Patient care teams shall universally screen all pregnant patients during each trimester of pregnancy for substance use.”). For an example of bias-informed screening practices, *see* Am. Coll. of Obstetricians & Gynecologists, *ACOG Releases New Recommendations on Cannabis Use in Pregnancy & Lactation* (Sept. 19, 2025); <https://perma.cc/A4UL-879U>; 49-0035-2 Wyo. Code. R. §§ 1-4 (identification of the need for a POSC and notification procedures).

175. As with all states, Wyoming does require a POSC notification. Wyoming’s POSC notification system is de-identified and only used for data reporting. *See* Wyo. Dep’t of Fam. Servs., *Plan of Safe Care Notification*, <https://perma.cc/SPE4-932J> (last visited Nov. 25, 2025). *See also* 049-0035-2 Wyo. Code R. § 3(a)(i)(A) (“An initial positive toxicology of the infant[] at the birth event is not indicative of abuse or neglect by itself; immediate safety concern(s) must accompany the positive toxicology.”).