



# **Guidelines for Child Welfare Agencies & Workers**

**Please contact Pregnancy Justice at [info@pregnancyjusticeus.org](mailto:info@pregnancyjusticeus.org) for assistance relating to any information in this section or the Guide generally.**

**The purpose of the child welfare system is to protect children from harm. That purpose is not achieved through the criminalization and penalization of pregnant women who use substances or who have substance use disorders, and the subsequent separation of mothers and babies when there are no indications of abuse present.<sup>183</sup>**

---

Studies fail to establish a causal link between drug use and child maltreatment. However, several studies establish that family separation imposes significant harms on children.<sup>184</sup> Evidence indicates that policies and practices of separating families based on alleged effects of drug use during pregnancy have a greater negative impact on children than supporting and maintaining the family unit.<sup>185</sup>

Child welfare agencies and workers have the power to disrupt the cycle of removing children from mothers on the basis of a positive drug test, the diagnosis of Neonatal Abstinence Syndrome or Neonatal Opioid Withdrawal Syndrome (which are transitory conditions best addressed through keeping the mother and baby together),<sup>186</sup> or in some states, a mere verbal screening suggesting intrauterine substance exposure, where there are no indicators of abuse or neglect. The testing of pregnant women and/or newborns at birth for substances varies by state. New York State's Department of Health, in stating that drug testing is not required by hospitals except under very limited circumstances, notes that the American College of Obstetricians and Gynecologists ("ACOG") does not recommend drug testing during pregnancy, delivery, or for the newborn.<sup>187</sup> ACOG specifically

admonishes that testing should not be "the sole factor in determining family separation."<sup>188</sup> However, other states, such as Minnesota, require testing of a newborn if substance use is suspected during pregnancy, and testing of a pregnant woman after delivery if "the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose."<sup>189</sup> According to the state, indicators for substance testing can include: unexplained premature delivery, presenting at the hospital in second stage of delivery, or low birth weight of the infant, despite the fact that these "indicators" may have absolutely nothing to do with drug use and a positive toxicology result would not change any possible course of treatment for the newborn.<sup>190</sup> Its sole purpose is to surveil the mother.<sup>191</sup>

In cases in which a pregnant woman or newborn tests positive for a substance (or where testing is not required and a mere verbal screening could indicate substance use), requirements for reporting to child welfare agencies vary by state.<sup>192</sup> Many medical professionals and child welfare workers misunderstand the requirements under the Child Abuse Prevention and Treatment Act ("CAPTA") and the Comprehensive Addiction and Recovery Act ("CARA").<sup>193</sup> For example, CAPTA/CARA requires states, in order to receive federal child abuse prevention funds, to develop policies for the "notification" to child welfare agencies of infants who are (i) affected by substance abuse; (ii) affected by withdrawal symptoms resulting from prenatal substance exposure; or (iii) have Fetal Alcohol Spectrum Disorder. Some medical personnel have conflated the "notification" requirement with a requirement of testing and referral for an abuse investigation.<sup>194</sup> In reality, notification requires only de-identified, aggregate data about the number of children born who fall under the relevant categories. The notification requirement can and should be done in a manner that does not make the family vulnerable to child welfare involvement.

Child welfare agencies and workers should be aware of these distinctions and understand the notification requirements of their specific state. Child welfare workers should know what they (and others) are legally required to do, rather than assume that a report of prenatal substance exposure or a positive drug test alone is evidence of child abuse.

Upon receiving a referral, child welfare agencies and workers can promote the goal of protecting children from harm in a number of ways. Absent a legal obligation to do so or other indicators of child abuse, a report based on suspected prenatal substance use or on a positive neonatal or maternal drug test should not result in an abuse investigation by child welfare agencies.<sup>195</sup> Child welfare agencies and workers can also promote maternal and child health and wellbeing in the following ways:

**1. Treat substance use disorder as a health issue, not child abuse.**

- » As a starting point, understand that a person's drug use is not an indicator of that person's ability to parent. A positive drug test merely indicates that a chemical compound is present in the bodily fluid collection.<sup>196</sup> Child welfare agencies and systems have placed undue emphasis on drug testing as the sole indicator of parenting abilities and as a basis for separating parents and children.
- » A positive drug test cannot determine whether a person: occasionally uses a drug; has a substance use disorder; suffers any physical or emotional disability from that substance use disorder; or is more or less likely, if they are parents, to abuse or neglect their children.<sup>197</sup>
- » Punitive responses to substance use during pregnancy generate negative health outcomes for pregnant women

and children by encouraging the avoidance of health care out of fear.<sup>198</sup> According to ACOG, "[p]enalizing parents through civil neglect petitions based on the pregnant [woman's] drug use makes medical care less accessible as pregnant people are more afraid to seek help for fear of state involvement, losing custody of their children, or losing their parental rights."<sup>199</sup>

- » Child welfare agencies should maintain clear policies in support of medication-assisted treatment and ensure that other actors (hospitals, law enforcement, schools) understand the agencies' policies to avoid unnecessary referrals and surveillance. For example, ACOG and the CDC expressly recommend and support medication for opioid use disorder during pregnancy, and state that infant withdrawal is an expected condition that can follow maternal treatment for opioid use.<sup>200</sup> The presence of withdrawal symptoms in an infant is temporary and treatable and is not evidence of child abuse.<sup>201</sup>
- » Drug testing does not assess child risk and safety, and agencies should not rely on drug tests alone to inform their decisions.<sup>202</sup> For example, in New York, "[e]vidence that a newborn tests positive for a drug or alcohol in its bloodstream or urine . . . is not sufficient, in and of itself, to support a determination that the child is abused or maltreated."<sup>203</sup> The U.S. Department of Health and Human Services likewise states, "[a] diagnosis of [neonatal abstinence syndrome] or [neonatal opioid withdrawal syndrome] does not imply harm, nor should it be used to assess child social welfare risk or status. It should not be used to prosecute or punish the mother or as evidence to remove a neonate from parental custody."<sup>204</sup>

# Child welfare agencies

should help families identify their strengths and encourage and promote community-based and peer support connections that support and protect the family unit.

- » If a child welfare worker believes that treatment for substance use disorder is necessary, he or she should first seek an assessment for substance use disorder from the individual's medical provider of choice, not make their own assumptions about the need for treatment or rely on an assessment from an agency-affiliated provider or program.
- » Child welfare workers should first defer to the family as to what services the family believes will support maintaining the family unit. Supportive services (i.e., housing, food, job placement or training, medical care, etc.) should be community-based and accessible to the family (i.e., does not impose costly and time-consuming travel burdens). Acceptance and use by the family of supportive services should be entirely voluntary and should not be mandated by child welfare workers or their agencies. If child welfare workers are mandated to consider or impose substance use treatment, they should consider the least restrictive or invasive options tailored to the particular situation, and whether the available resources provide evidence-based and accessible care.
- » Child welfare workers and agencies should be aware of the resources available to their agencies under certain grant programs. For example, the Substance Abuse Prevention and Treatment Block Grant gives priority or preferred access to pregnant women to receive treatment for substance use disorders.<sup>205</sup> However, mere priority or preferred access does not necessarily translate into accessible, evidence-based care that addresses the specific needs of the affected family.<sup>206</sup>

## **2. Prioritize support and services over removal in the interest of infant health.**

- » Studies show that keeping children with their families results in better long-term outcomes for the children than family separation.<sup>207</sup> Child welfare workers should prioritize preserving the family unit rather than defaulting to child removal to foster care.
- » In the case of a referral received while a newborn is still hospitalized, the prevailing best practice for treating substance-exposed newborns is to keep the newborn and mother together (known as “rooming in”), encourage breastfeeding, and provide trauma-informed care to the mother-infant dyad. Studies show that these practices improve medical outcomes, decrease length of hospital stays, and improve [bio]psychosocial outcomes.<sup>208</sup>
- » Providing all new mothers with lactation assistance is critical. One study that followed a large birth cohort over 15 years determined that breastfeeding was associated with substantially lower odds of maternal maltreatment.<sup>209</sup> In fact, breastfeeding for four or more months was associated with a four-fold reduction in substantiated reports of neglect.<sup>210</sup>
- » Child welfare agencies should help families identify their strengths and encourage and promote community-based and peer support connections that support and protect the family unit. And if there are no concerns other than a positive drug test, then there should be no agency and child welfare worker involvement. Supportive services should protect the family and promote reunification.

### 3. Understand the role of discrimination and bias in referrals to child welfare agencies.

- » Recognize that overt racism and implicit and unconscious biases contribute to Black women being disproportionately referred to child welfare agencies for perceived or actual substance use disorders.<sup>211</sup> Such referrals often result in higher surveillance and removal rates and lower family reunification rates for Black mothers and their families.<sup>212</sup> Some reports indicate that up to 53% of Black children have experienced a child welfare agency investigation by the time they are 18 years old.<sup>213</sup> Although Black children account for approximately 14% of the population of children, they make up 23% of the foster care population.<sup>214</sup>
- » Implement unconscious bias, anti-racist, and cultural humility training of child welfare workers to improve ways in which the child welfare agency can take an unbiased approach in its work and educate other actors in the system (hospitals, law enforcement, schools) to recognize their own biases in making referrals.<sup>215</sup>
- » Use consistent protocols for making decisions on reunification and case closure. Track and issue public disclosures regarding the total number of cases involving prenatal substance exposure and their outcomes to facilitate and promote evidence-based policies and approaches. Such data should be disaggregated by race and socioeconomic status. Consider further auditing to identify bias in approaches by individual case workers.

### 4. Inform parents of their rights during a child welfare investigation and/or proceeding.

- » Child welfare workers can reduce harm to families subject to child welfare investigations by rejecting the notion that withholding information about parental rights during an investigation or proceeding is in the best interest of the child.
- » Agencies and workers should be familiar with the legal rights of parents with respect to child welfare agency investigations and proceedings in their jurisdiction, and inform parents of those rights.
- » Maintain a list of *pro bono* legal services organizations in your jurisdiction that provide representation to parents in child welfare investigations and proceedings and share those resources with families.

**Studies show that keeping children with their families results in better long-term outcomes for the children than family separation.**