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Many states have laws that criminalize substance use during pregnancy.

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**SUBSTANCE USE  
DURING PREGNANCY  
BY THE NUMBERS (2020)**

- **8–11 Percent**  
of pregnant women used alcohol, tobacco, and/or illicit drugs in the preceding month.
- **9 in 10**  
pregnant women take prescription medication during pregnancy, despite insufficient evidence of the risks of use during pregnancy for more than 90 percent of prescription medications.

## EXPLAINER

# Substance Use, Pregnancy, and Policy

January 2025

Substance use during pregnancy is [fairly common](#). In 2020, an estimated [8 to 11 percent of pregnant women](#) used alcohol, tobacco, and/or illicit drugs in the preceding month. Most substance use during pregnancy [involves legal substances](#), with alcohol being the most common, followed by tobacco and cannabis. Additionally, [nine in 10 pregnant women](#) take prescription medication during pregnancy, despite insufficient evidence of the risks of use during pregnancy for more than [90 percent of prescription medications](#). Health outcomes from substance use during pregnancy can vary significantly for the pregnant individual and the fetus or newborn. Stillbirth, preterm birth, disability, and neonatal abstinence syndrome (when a newborn shows withdrawal symptoms) are [possible outcomes](#), but they do not always occur in fetuses exposed to substances during pregnancy.

Because of the potential for harm, many states have laws that criminalize substance use during pregnancy, trigger review by child protective services (CPS), or inflict other penalties. These laws vary considerably in what constitutes evidence of substance use and which substances carry penalties. The following is a brief overview of the types of policies that can affect pregnant and parenting people who use substances.

## Child Abuse Prevention and Treatment Act (CAPTA)

Many states and child welfare agencies have interpreted [CAPTA](#), which provides federal funding for child abuse prevention and investigation efforts, as requiring the reporting of substance-exposed newborns to social services as potential child abuse or neglect. However, CAPTA only requires medical providers to “[notify](#)” CPS of newborns exposed to substances, which is different from filing a report. A report prompts an investigation, while notifications [are intended to help](#) “determine whether and in what manner local entities are providing, in accordance with state requirements, referrals to and delivery of appropriate services.”

## Effects of State Law

States have implemented a range of laws related to substance use during pregnancy and postpartum. Many of these laws are interrelated, embedded in other laws, carve out certain substances, or specify evidentiary requirements, making generalizing about these laws difficult. Nevertheless, as the number of states taking a punitive approach to substance use during pregnancy increases, [some trends are apparent](#).

First, the idea that fetuses have [legal or constitutional rights](#) underlies assigning criminal or civil penalties to substance use during pregnancy—and the idea extends to criminalizing other actions during pregnancy, too. Legal language implying these rights is scattered throughout legislation and code; however, the number of states [pursuing explicit laws](#) establishing fetal rights has increased.

One category of laws that can affect people who use substances during pregnancy covers child abuse, endangerment, and neglect. As of June 2024, [nearly half of all states](#) and the District of Columbia include [substance use during pregnancy](#) in their child abuse or neglect laws or require reporting to CPS. An additional [14 states](#) consider substance use during pregnancy child abuse or neglect only if there is evidence of harm to the child. [Several other states](#) have judicial decisions, unclear legislative language, or other reporting procedures related to substance use during pregnancy.



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Evidence suggests that punitive approaches to substance use during pregnancy are ineffective, and every major health care organization with a policy position on the issue suggests education and evidence-based treatment over criminalization.

## Contact us

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Although many laws related to substance use and pregnancy are punitive, others are more supportive. Some states [have passed laws](#) that establish or fund programs specifically for people with a substance use disorder (SUD) who are pregnant or postpartum. Laws that give priority status to pregnant people for SUD treatment and prohibit discrimination based on pregnancy status in publicly funded SUD treatment programs [are also in place](#) in some states.

## Consequences of Punitive Policies

The consequences of laws that criminalize or establish punitive ramifications for substance use during pregnancy can be legal or health related. Substance use during pregnancy or the postpartum period can result in family separation, with the newborn (and possibly other children) being placed in foster care. Civil or criminal charges are possible. At least [five states](#) also allow [involuntary civil commitment](#) to a substance use program if prenatal substance use is confirmed.

Punitive approaches to substance use during pregnancy can also impact health outcomes. Prenatal care can [decrease the risk](#) of negative pregnancy outcomes significantly; however, these approaches can discourage people from seeking [prenatal care](#) and [SUD treatment](#).

## Treatment Challenges

For some people, pregnancy can be a [powerful motivation](#) to stop using substances or enter a treatment program. Unfortunately, pregnancy can also be a barrier to treatment. One study that used a “secret shopper” approach found that callers who said they were pregnant were [less likely to receive an appointment](#) with an opioid treatment clinician than those who said they were not pregnant. Another study found that [23 percent of residential and outpatient opioid treatment programs](#) had specialized programs for pregnant and postpartum individuals in 2018—up from 17 percent in 2007. The increase still does not meet demand, as a 2020 study found that only [7.6 percent of pregnant women with an SUD](#) received treatment.

Even if a pregnant person finds a provider or program that will accommodate them, the treatment they receive may not be evidence-based. The American College of Obstetricians and Gynecologists [recommends](#) that clinicians offer pregnant patients with opioid use disorder (OUD) medications for opioid use disorder (MOUD) rather than medically supervised withdrawal because MOUD has lower relapse rates. However, [for the last 20 years](#), about [50 percent of pregnant women who enter OUD treatment receive MOUD](#).

Despite MOUD being prescribed and used under medical supervision, pregnant people who use it may still face [family separation](#) or legal consequences. This is particularly true for pregnant people using methadone, because it can cause a positive drug test result.

## Conclusion

Evidence suggests that [punitive approaches to substance use during pregnancy](#) are ineffective, and [every major health care organization](#) with a policy position on the issue suggests education and evidence-based treatment over criminalization.