

Alcohol Use in Pregnancy: Criminal Activity or Public Health Issue?

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This presentation is for educational purposes only and should not be construed as legal advice. Participants are advised to obtain appropriate legal counsel when considering legal questions regarding this topic.



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Disclosure Declarations

Name	Disclosure
Susan Kendig (Instructor)	Nothing to disclose
Kerry Mauger, (Planner)	Nothing to disclose
Karen Wolf-Branigin, (Manager)	Nothing to disclose
Leigh Ann Davis, (Manager)	Nothing to disclose

Objectives

This presentation will provide a high level overview of statutory approaches to addressing alcohol use in pregnancy. Upon completion of this webinar, participants will be able to:

1. Compare and contrast examples of state laws addressing the use of alcohol and other drugs by a pregnant woman
2. Compare and contrast examples of state laws addressing identification of exposure to alcohol in utero.
3. Discuss implications for addressing alcohol use in pregnancy under different statutory schemes.



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Screening Recommendations

- Assess all pregnant women about alcohol use early in pregnancy and at each subsequent visit;
- Offer a brief intervention to all pregnant women using alcohol or other drugs;
- Offer comprehensive assessment and individualized care to pregnant/postpartum women using alcohol;
- At the earliest opportunity advise pregnant women to cease alcohol or drug use and refer to appropriate services.

WHO. (2014). Guidelines for identification and management of substance use and substance use disorders in Pregnancy.



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Screening Recommendations

- The USPSTF recommends that clinicians screen adults aged ≥ 18 yo for alcohol misuse and provide persons engaged in risky or hazardous drinking with brief behavioral counseling interventions to reduce alcohol misuse. <http://www.uspreventiveservicestaskforce.org/uspstf12/alc misuse e/alc>
- ACOG recommends that pregnant women, and those at risk for pregnancy, be advised to avoid alcohol; or provide assistance for achieving abstinence or effective contraception... ACOG. (2011) Committee opinion no. 496: at-risk drinking and alcohol dependence: obstetric and gynecologic implications. Obstet Gynecol. 118(2 Pt 1):383-8. misusefinalrs.htm#update

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Who is at Risk?

- A lower percentage of black, Hispanic, and other women reported third trimester drinking.
- More women ≥ 25 yo with higher education levels (≥ 16 yrs.) reported drinking in pregnancy
- Percent of women ≥ 25 yo reporting drinking was significantly higher among primiparas.
- Smoking during pregnancy significantly associated with alcohol use across age groups
 - Third trimester smokers more likely to use alcohol (5.8%) than non-smokers (3.7%)

Kitsantas, et al (2014).



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Intersection of Policy and Alcohol Use in Pregnancy

- Reporting requirements
 - Data collection
 - Referral for treatment
 - Prosecution
- Criminal prosecution
- Civil commitment
- Priority Treatment
- Child Abuse and Neglect



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State Policy Highlights

- One state permits assault charges against a pregnant woman who uses certain substances.
- 18 states consider substance abuse in pregnancy child abuse
- 3 states consider substance abuse in pregnancy grounds for civil commitment
- 4 states require testing for prenatal drug exposure if suspected drug use
- 15 states require HCPs to report suspected prenatal drug abuse

Guttmacher Institute. (June 1, 2015). State Policies in Brief: Substance Abuse in Pregnancy. www.guttmacher.org

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State Policy Highlights

- 19 states have created or funded perinatal drug treatment programs
- 11 states provide pregnant women with priority access to state funded drug treatment programs
- 4 states prohibit publicly funded drug treatment programs from discriminating against pregnant women

Guttmacher Institute. (June 1, 2015). State Policies in Brief: Substance Abuse in Pregnancy.
www.guttmacher.org

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Defining the Conversation: Is Alcohol a “Drug?”



Health Care Provider Attitudes

- Study of Michigan physician attitudes re: criminal justice system involvement in perinatal substance use prevention
 - Nearly all agree pregnant women have moral duty to ensure healthy babies
 - Over half agree pregnant women have legal responsibility to ensure healthy babies
 - Almost $\frac{3}{4}$ in favor of screening for alcohol abuse
 - Over $\frac{1}{2}$ in favor of including alcohol and drug use during pregnancy as child abuse for purpose of removing child from maternal custody
 - Over half believe that fear of prosecution would be a barrier to prenatal care.

Abel, EL & Kruger, M. (2002) Physician attitudes concerning legal coercion of pregnant alcohol and drug abusers. *AJOG*, 186(4), 768-722



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ACOG Opinion: Substance Abuse Reporting and Pregnancy

“Use of the legal system to address perinatal alcohol and substance abuse is inappropriate.”

- Pregnant women who do not receive treatment cannot be assumed to have rejected treatment.
- Recognize barriers to participation in drug treatment facilities and programs accepting pregnant women.
- Opportunities for intervention
 - Safe prescribing
 - Patient education and support to promote healthy behaviors
 - Identification and referral
- Calls for physicians to work with legislators to retract punitive legislation. ACOG.(2011 - reaffirmed 2014). Substance abuse reporting and pregnancy: The role of the OB/GYN. Committee opinion no. 473.

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Policy Implications Related to Alcohol Use in Pregnancy

- Analyses of state level policy focus on illicit drug use in pregnancy. Problematic because:
- Although alcohol use tends to decline with pregnancy diagnosis it is more common than illicit drug use
- Public health oriented policies, such as priority treatment for pregnant women, could increase the number of women who obtain help
- Punitive reporting requirements could pose a barrier to prenatal care
- Punitive reporting requirements and interventions create mistrust between the woman and her health care providers.

Drabble, L. et al. (2014). State responses to alcohol use and pregnancy: Findings from the Alcohol Policy Information System. J Soc Work Prac Addict, 14(2). 191-206

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Gauging the Policy Environment

- Supportive approach - mandatory warning signs, priority treatment, limits on criminal prosecution, reporting for surveillance or treatment
- Punitive approach - civil commitment, mandatory referral to child welfare, alcohol exposure defined as child abuse/neglect

Policy Change Over Time

(2003 - 2012) Drabble, et al (2014)

Policy	Level of Change
Mandatory reporting for alcohol use in pregnancy	26 states to 35 states
Link alcohol use in pregnancy to child welfare	14 states to 20 states
Mandatory warning signs re: potential harm of drinking in pregnancy	20 to 24 states
Priority treatment for pregnant, postpartum or parenting women	16
Limiting prosecution for alcohol use in pregnancy	5 states to 6 states
Civil commitment to protect the fetus	3 states to 5 states

Discussion: Reporting Requirements

- Requirements to report suspicion or evidence of alcohol use/abuse in pregnancy
 - Laboratory screening or toxicology testing of pregnant women
 - Laboratory screening or toxicology testing of newborn after birth
- Mandatory vs. discretionary reporting
- Purpose of reporting
 - Data gathering and surveillance
 - Referral for treatment
 - Referral to child welfare agency
- Who must report



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Discussion: Limitations on Use of Medical Tests in Criminal Prosecution

- Use of medical tests, laboratory screens or toxicology testing prohibited or limited as evidence in criminal prosecution of women who may have caused harm to a fetus/child
 - Law specific to fetal or child harm from alcohol exposure
 - General child endangerment laws

Discussion: Involuntary Civil Commitment for Fetal Protection

- Civil commitment refers to involuntary commitment of a pregnant woman to treatment or involuntary placement in protective state custody.
- Judicial commitment - Court ordered
- Variances among states as to:
 - Who can seek the judicial commitment
 - Grounds for the judicial commitment
 - Maximum length of judicial commitment
 - Location of judicial commitment



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Discussion: Priority Access to Treatment for Pregnant Women

- Availability of treatment facilities
- Funding for treatment facilities
- Pregnant (and postpartum and parenting) women receive priority for available treatment services

Discussion: Admissibility of evidence in child welfare proceedings

- Legal significance of woman's prenatal conduct and damage caused in utero varies across jurisdictions:
 - Clarification of rules for evidence of prenatal drug exposure in child welfare proceedings
 - Limitation on use of evidence in such proceedings.

Considerations for the Treatment Team

- Health and human service providers caring for pregnant women at risk for or currently using alcohol and other drugs in pregnancy should:
 - Understand how the various state regulatory schemes intersect with patient care responsibilities
 - Understand reporting requirements, responsibilities and protocols related to alcohol or drug use by pregnant women, and the purpose of such requirements.
 - Seek appropriate legal counsel when developing policies and procedures related to federal or state statutory and regulatory requirements, and as needed in determining responses or actions related to legal requirements.



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Thank you for your attention.

Let's Chat!




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