

# Parental Substance Abuse and Child Welfare: Promising Programs for Early Intervention and Permanency

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This presentation deals with parental substance abuse and child maltreatment. It focuses on legal strategies for early intervention to prevent abuse and neglect among substance-exposed infants (SEI's).<sup>2</sup> Two strategies are considered: referral requirements under the federal Child Abuse Prevention and Treatment Act (CAPTA),<sup>3</sup> and family drug treatment courts (FDTC's) targeting SEI's.

CAPTA mandates that states receiving federal funds require hospital staff to refer to child protective services (CPS) any infant "identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure or Fetal Alcohol Spectrum Disorder".<sup>4</sup> The aim is to promote the safety of SEI's.<sup>5</sup> However, the provision's efficacy is limited in three main ways. First, Fetal Alcohol Spectrum Disorder (FASD) does not typically present until a child reaches school age.<sup>6</sup> Thus, the majority of alcohol-exposed infants will not be referred to CPS. Second, the Act does not establish prenatal substance exposure as a ground of abuse or neglect. This may limit the ability of CPS and courts to monitor the safety of SEI's over time. Finally, the Act limits referrals involving infants "identified" as substance-exposed. It does not require that SEI's be identified. This creates risks of over-inclusion and under-inclusion. For example, Black infants are referred at higher rates than white infants.<sup>7</sup> Universal testing of infants is proposed as a way to reduce risk of bias and increase the number of SEI's referred.

FDTC's targeting SEI's are a second potential tool for early intervention. FDTC's aim to address a parent's substance abuse treatment and other service needs whilst promoting permanency for children.<sup>8</sup> FDTC's targeting SEI's intervene prior to

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<sup>2</sup> Substance-exposed infants are the focus because they appear at increased risk of maltreatment: see Paula Kienberger Jaudes et al., *Association of Drug Abuse and Child Abuse*, 19(9) CHILD ABUSE & NEGLECT 1065 (1995).

<sup>3</sup> Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106 (2010).

<sup>4</sup> *Id.*

<sup>5</sup> H.R. Rep. No. 108-26 (2003).

<sup>6</sup> See Vicky R. Bowden & Cindy S. Greenberg, CHILDREN AND THEIR FAMILIES: THE CONTINUUM OF CARE 562 (2010).

<sup>7</sup> See Marc A. Ellsworth et al., *Infant Race Affects Application of Clinical Guidelines When Screening for Drugs of Abuse in Newborns*, 125(6) PEDIATRICS e1379 (2010); Hillary Veda Kunins et al., *The Effect of Race on Provider Decisions to Test for Illicit Drug Use in the Peripartum Setting*, 16(2) JOURNAL OF WOMEN'S HEALTH 245 (2007); Inger Sagatun-Edwards et al., *Drug Exposed Infants in the Social Welfare System and Juvenile Court*, 19(1) CHILD ABUSE & NEGLECT 83 (1995); Ira J. Chasnoff et al., *The Prevalence of Illicit-Drug or Alcohol Use During Pregnancy and Discrepancies in Mandatory Reporting in Pinellas County, Florida*, 322(17) NEW ENGLAND JOURNAL OF MEDICINE 1202 (1990).

<sup>8</sup> See Leonard P. Edwards & James A. Ray, *Judicial Perspectives on Family Drug Treatment Courts*, 56 JUV. & FAM. CT. J. 1 (2005).

maltreatment; parents are referred to FDTC's immediately following the birth of an SEI.<sup>9</sup> The same issues threatening the efficacy of CAPTA's referral requirement threaten the ability of FDTC's to intervene early to prevent maltreatment of SEI's. In jurisdictions where FDTC's targeting SEI's operate, universal testing ought to be implemented. FDTC's should also hear cases involving alcohol-exposed infants, even those not (yet) identified as suffering from FASD. Finally, child abuse laws should be amended to include prenatal substance exposure as a ground of maltreatment. This would grant FDTC's jurisdiction over SEI's and their parents.

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<sup>9</sup> See Jean E. Twomey et al., *Vulnerable Infants Program of Rhode Island: Promoting Permanency for Substance-Exposed Infants*, 89(3) *Child Welfare* 121 (2010).