



February 19, 2021

To Whom It May Concern:

The Promoting Resilience Project at the University of Wisconsin (part of the first phase of the Healthy Brain and Child Development Study) has produced this 50-state legal analysis to help researchers, particularly HBCDII applicants, understand the legal risks of recruiting pregnant women who use controlled substances and alcohol into a longitudinal study. This [chart focuses on laws for reporting, referring, or notifying state authorities about the birth of a substance-exposed or substance-affected newborn](#). We have sometimes incorporated information about prenatal substance use as evidence in child protection proceedings, including proceedings to terminate parental rights, but we did not conduct a comprehensive analysis of that issue. This **chart is still in draft form**, although close to fully quality-checked and updated. **This chart DOES NOT contain legal advice. You should talk to your institutional lawyers for a better understanding of the law of your state and how it applies to you as researchers.** Institutional lawyers will have local knowledge that we do not have; but you may have to remind them that people conducting research may not have the same legal requirements for reporting prenatal substance exposure or child abuse as physicians, therapists, counselors, or social workers who are treating patients or providing professional services.

Prenatal substance exposure is not a unified or singular concept in state law; states address the issue in many ways and use many types of evidence to trigger reporting requirements. The chart follows distinctions made in state law. Furthermore, moving from left to right the chart follows the timeline of pregnancy, childbirth/infancy, and early childhood. It first addresses reporting a woman who is pregnant and using substances, **while she is pregnant** and before a child is born. It next considers whether information about the woman (such as positive toxicology report, self-report of substance use during pregnancy, medical history/pregnancy complications) could trigger a report **after her baby is born**. Law relating to the woman's information is addressed in chart items (A) – (D). The chart next considers particular kinds of information about a child who is born substance-exposed or affected, and which of these kinds of information would be reportable to a child protection agency for a child abuse investigation. Our items (E) – (H) address reporting of information about a newborn. Then we consider whether researchers would be reporters of child abuse that is not directly the result of prenatal substance exposure. Almost always the answer is “yes.”

Please pay attention to the column headings in the chart; they make sometimes subtle distinctions, but these distinctions are legally meaningful. It may seem strange and complicated to “divvy up” prenatal substance exposure as we have, but we've done this because state laws use particular kinds of information to trigger reporting of the birth of a substance-exposed or affected child. State law mention particular kinds of information that count as evidence that a child has been abused or neglected. For instance, a newborn's positive toxicology is mentioned in many state statutes.

For nearly all of the categories we address, we first ask whether the information is **reportable** to a state agency. By reportable we mean that a report containing that information would be accepted by a state agency (screened in) and investigated as a case of suspected child abuse. We include this category because it can indicate to researchers that their participants might be reported by somebody else, even if researchers would be barred from reporting by a certificate of confidentiality. The question of whether a type of information is “reportable” is followed by the question of **whether a researcher would be**

REQUIRED to report that information. **This category assumes that the researcher is NOT also in a provider-patient relationship with any research participants.** In most cases, the chart cells reflect this assumption; however, our quality control on this issue has not been completed. So you should carefully read the narratives in the chart to determine whether a researcher who is not also providing care to a research participant would be required to report. **There are many instances in which a physician who is providing care to a patient would be required to report, but a researcher who is not providing health care or social work for the participant would not be required to report.**

Whether the law requires reporting matters because a certificate of confidentiality prohibits researchers from disclosing information UNLESS the disclosure is required by a federal, state, or local law (such as tribal law) or the researcher obtains consent from the person to whom the research information pertains.

Finally, our items (B), (C), and (D) were added to the analysis later, and after we realized breaking that information out would be useful. In many cases, chart cells for those columns are blank. That is because we have not yet had time to review our conclusion that the woman's information is not reportable in those states. For most or all states where those cells are left blank, the woman's information would not, by itself, trigger a child abuse report.

If you have any questions, you can email them to pnoessorio@wisc.edu. If you have suggestions or find mistakes, please let us know. This information is currently being loaded onto a website designed specifically for displaying 50-state legal analyses. The website should be available within the next month.

Yours,



Pilar Ossorio, Ph.D., J.D.
Professor of Law and Bioethics; University of Wisconsin-Madison
Bioethics Scholar; Morgridge Institute for Research