Prenatal Substance Exposure and Child Protection: Trends in Policy and Practice

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CARA and Plans of Safe Care

- The premises:
  - Pregnant women/mothers using substances are being sent to CPS when there is little or no risk to the infant
  - Infants are unnecessarily entering foster care as a result
  - Many or most pregnant women/mothers using substances can be safely and effectively treated outside of the CPS system
  - If treatment is offered outside of CPS, uptake and engagement will improve
- What is true?

How many babies are born exposed to drugs or alcohol?

- “Estimates suggest that 10–11% of all newborns, or 400,000–480,000 newborns, were exposed to alcohol or illicit drugs during pregnancy in 2005”

- True prevalence is unknown. Why?
- “Universal screening” is the recommended practice.
  - Not required
  - What even is ‘screening’?
- Toxicology testing appears to be rare:
  - In Michigan:
    - Drug tests of the mother ordered in 4.6% of pregnancies
    - Drug tests of the newborn: 4.7%
    - 98% of babies born to non-tested moms were also not tested

Wouldn’t doctors test if they were concerned though?

- Not necessarily:
  - If a positive test triggers a CPS report, doctors may be reluctant to test except in the most extreme cases
  - Indicators of maternal substance use can be non-specific (e.g., pre-term birth or low birthweight) → difficult to conclusively connect maternal use to newborn health
  - Physical symptoms of exposure may not occur even if the parent’s ongoing use poses risk of harm to infant

Studies show signs of newborn substance exposure are missed by health care providers—even conditions with specific or unique symptomology (e.g., fetal alcohol spectrum disorder; FASD).

When reporting is not required, doctors may not report

Child Protection Reports and Removals of Infants Diagnosed with Prenatal Substance Exposure

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Table 2.

Percent of System Response by Substance Type

	All Substances N = 12276		Opioids n = 5927		Cannabis n = 2975		Amphetamine n = 2212		Alcohol n = 612		Cocaine n = 582	
	n	%	n	%	n	%	n	%	n	%	n	%
No Report	7073	57.6	3528	59.5	1979	66.5	918	41.5	411	67.2	237	40.7
CPS Report Only [a]	3562	29.0	1710	28.9	880	29.6	685	31.0	122	19.9	165	28.4
Report & Removed [b]	1641	13.3	677	11.4	106	3.6	603	27.3	76	12.4	179	30.8

[a]within the early neonatal period (within 7 days)

[b]within the neonatal period (within 28 days)

SOURCE: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6333477/

When CPS reports occur and risk is identified, most infants are still not removed

- In WA (previous slide) : about 30% of infants reported in the neonatal period were removed
- In PA, 2015-2018: of >13,000 infants with confirmed child welfare cases related to parental substance use: ~11% were removed (Palmer et al, under review)

What risk does parental substance use pose to infants?

Pennsylvania Fatality / Near Fatality Review

Substance use and infants' health and safety

- In Pennsylvania, among infants on Medicaid with a substance-using parent:
  - **40%** had a **missed developmental milestone**
  - **15%** experienced a **serious nonfatal injury** within 1-3 years of being assessed by child welfare, mostly head injuries
  - Among infants referred in the first 30 days of life: Serious injury rates were 60-100% higher among infants who remained in parental care (versus foster care)

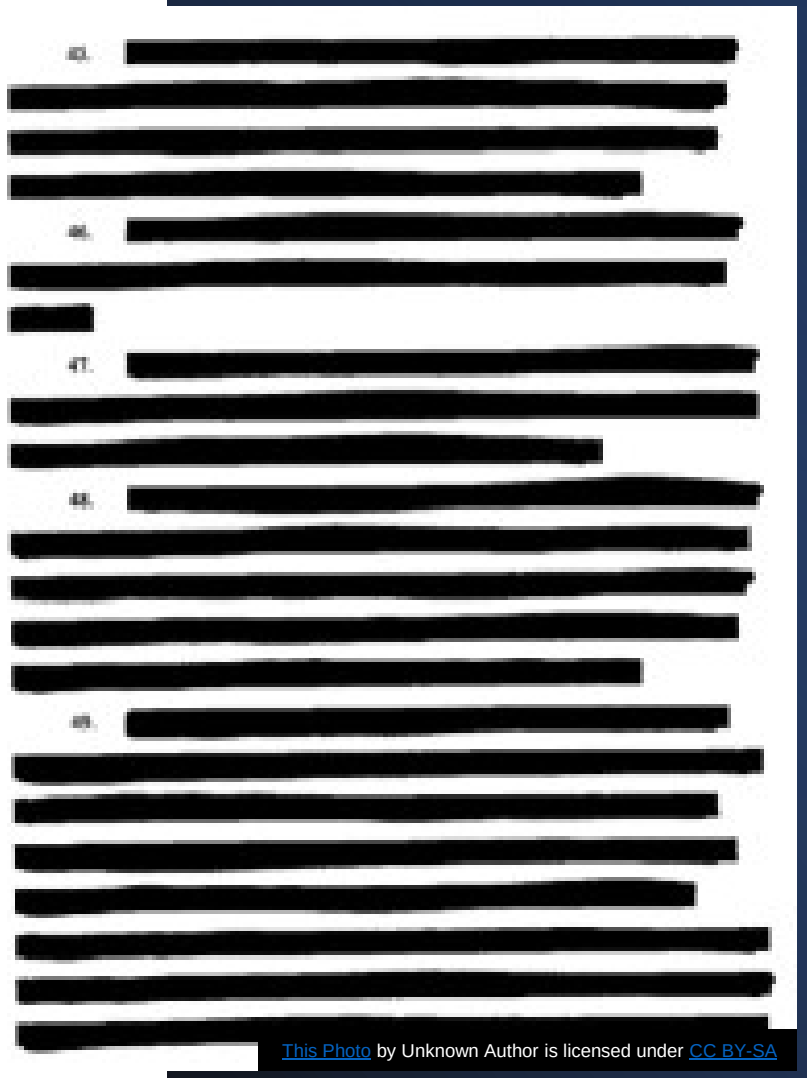
Linking back to CARA premises…

- Pregnant women/mothers using substances are being sent to CPS when there is no risk to the infant?
  - Very few women/newborns are tested
  - Many who test positive are not reported (state law variation)
  - News reports of women stabilized through MAT being reported due to child NAS symptoms or positive test
  - Disagreement about what ‘risk to infant’ threshold is
  - Marijuana–only cases & legal status
- Infants are unnecessarily entering foster care as a result?
  - Most not removed
  - No consensus measure of “unnecessary”
  - Few states follow/report the outcomes of infants they leave in home
- Many or most pregnant women/mothers using substances can be safely and effectively treated outside of the CPS system?
  - What is the rate of uptake for voluntary substance use treatment? Not tracked
  - What is the rate of completion? Not tracked
  - What is successful treatment outcome, given commonality of relapse?
- Engagement will improve if the offer of services is not through CPS?
  - Maybe on average. But what happens to those who still don’t engage?

Where policy is heading: Deidentified notifications

Tracking numbers of babies referred for ‘plans of safe care’ but not telling CPS who they are.

- Why? To reduce unnecessary CPS contact.
- Assumption: CPS routinely overreacts to parental substance use
- Problem: Implicitly, federal government is saying not to trust states to screen referrals (slippery slope)?
- Problem: If CPS is in the dark, no ability to review CPS history before diverting case to voluntary plan
- Problem: If children are deidentified, how do we know the diversion “worked”? (can’t track outcomes)



Where policy is heading: Parental consent for drug testing of self/newborn

- Why? Due process
- Problems: Will undoubtedly allow parents with chronic and active substance use take their vulnerable infant home with no oversight or treatment
  - Parents using substances are very unlikely to consent
  - Those least motivated to address their use are least likely to consent
  - The window of time for intervention before child is released from hospital is very short
  - Unclear what process would look like to bypass consent
  - Testing for exposure is relevant to understanding child’s health care (and protection) needs

Where policy is heading: Quiet abolition?

- Requiring the pursuit of “non-punitive” (voluntary and separate from CPS) approaches to replace CPS involvement in various situations, but especially parental substance use

- Open questions that require open debate:
  - Is voluntary an *effective* framework for necessary activities?
  - Is voluntary an *ethical* framework when the person at greatest risk of harm by refusal of voluntary treatment (the child) is not the individual who gets to choose?
  - Does *involuntary* inherently mean *punitive*?