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**Information Brief**

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**NCJRS**

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**ACQUISITION**

**Prenatal Exposure  
to Controlled Substances**

This information brief describes Minnesota laws relating to the use of certain controlled substances (drugs) by pregnant women. It outlines laws governing the reporting of and testing for (1) drug use by the pregnant woman; and (2) the prenatal exposure of infants to these drugs.

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## **Reports of Drug Use by Pregnant Women (Minn. Stat. §626.5561)**

### **Reports Required**

A person who is a "mandated reporter" under the Child Abuse Reporting Act must immediately report to the local welfare agency if the person has reason to believe that a pregnant woman has used cocaine, heroin, phencyclidine, amphetamine, or methamphetamine for a nonmedical purpose during the pregnancy. The report may be made orally by telephone or otherwise, but must be followed by a written report within 72 hours, excluding weekends and holidays. The report must at least identify the pregnant woman, the nature and extent of the drug use, if known, and the name and address of the reporter.

A person is a "mandated reporter" if the person is a professional or a professional's delegate who is engaged in the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement. Members of the clergy are also "mandated reporters" unless the information was obtained during a privileged communication.

### **Duties of Local Welfare Agency**

Upon receiving a report of prenatal exposure to one of these controlled substances, the local welfare agency must immediately conduct an assessment and offer necessary services to the pregnant woman. These services may include a referral for chemical dependency services and treatment, if recommended, or a referral for prenatal care.

### **Civil Commitment Act Provisions**

Under the Minnesota Civil Commitment Act, a person may be involuntarily committed to a treatment facility if the person is a "chemically dependent person". This term includes a pregnant woman who, during the pregnancy, has engaged in habitual or excessive use, for a nonmedical purpose, of cocaine, heroin, phencyclidine, methamphetamine, or amphetamine. (Minn. Stat. §253B.02, subd. 2.)

A welfare agency that receives a report of prenatal exposure to controlled substances is authorized to file a petition for civil commitment of the pregnant woman if it believes she comes within this definition of "chemically dependent person". Additionally, the agency may seek an emergency admission of the pregnant woman to the treatment facility without first filing a civil commitment petition in court if the woman is in imminent danger of harming

herself or others due to her chemical dependency. Under this emergency admission procedure, the pregnant woman can be held in the facility for up to 72 hours for the purpose of diagnosis and emergency treatment. Formal civil commitment proceedings must be instituted in court for the pregnant woman to be held longer than 72 hours.

Furthermore, the welfare agency **must** seek an emergency admission of the pregnant woman to a treatment facility under the Civil Commitment Act if the agency has offered treatment or prenatal services to the pregnant woman, and the pregnant woman either has refused these recommended voluntary services or has failed recommended treatment.

### **Other Applicable Provisions**

Reports of prenatal exposure to controlled substances are also governed by the following provisions of the Child Abuse Reporting Act:

- ▶ reporters and those assisting in assessments are immune from legal liability if they act in good faith
- ▶ mandated reporters are protected from retaliation from their employers
- ▶ there is liability for knowingly or recklessly making a false report
- ▶ it is a misdemeanor to knowingly fail to report
- ▶ evidence of child neglect may not be excluded from legal proceedings on grounds of spousal or medical privilege
- ▶ records are accessible under the same terms that apply to other records under the Child Abuse Reporting Act.

### **Reports of a Child's Prenatal Exposure to Drugs (Minn. Stat. §626.556, subd. 2(c))**

The Child Abuse Reporting Act requires "mandated reporters" (see page 2) to file a report with the local welfare agency or law enforcement agency if the reporter has reason to believe a child has been neglected. The definition of "neglect" includes prenatal exposure of a child to the mother's use, for a nonmedical purpose, of cocaine, heroin, phencyclidine, amphetamine, or methamphetamine. Evidence of such prenatal exposure may include (1) withdrawal symptoms in the child at birth; (2) the results of a toxicology test performed on

the mother at delivery or on the child at birth; or (3) medical effects or developmental delays during the child's first year of life that indicate prenatal exposure to controlled substances.

Upon receiving a report of child neglect, the welfare agency must conduct an assessment of the child's need for appropriate medical and social services and, if necessary, seek to provide these services with the mother's voluntary participation or by means of a juvenile court order.

## **Toxicology Test Requirements (Minn. Stat. §626.5562)**

### **Testing of Pregnant Women and Women Who Have Recently Given Birth**

Minnesota law requires a physician to give a toxicology test to a pregnant woman or to a woman within eight hours after delivery if the woman is under the physician's care and has obstetrical complications indicating that she has used cocaine, heroin, phencyclidine, amphetamine, or methamphetamine for a nonmedical purpose. If the toxicology test result is positive, the physician must report the result to the local welfare agency to enable it to offer appropriate treatment and other support services to the pregnant woman. If the test result is negative, but the physician has reason to believe, through other evidence, that the woman has used one of these controlled substances for a nonmedical purpose, the physician must still make a report to the local welfare agency.

### **Testing of Newborn Infants**

This statute also requires a physician to give a toxicology test to a newborn infant born under the physician's care if the physician has reason to believe, based on a medical assessment of either the mother or the infant, that the mother used any of these five controlled substances for a nonmedical purpose during the pregnancy. If the toxicology test result is positive, the physician must report the result to the local welfare agency as "child neglect" under the Child Abuse Reporting Act. If the test result is negative but the physician has reason to believe, through other medical evidence, that the infant has been exposed prenatally to one of these controlled substances, the physician must still make a child neglect report to the local welfare agency.

## **Test Reports Given to Department of Health**

Physicians must also report these toxicology test results to the state Department of Health. The reports are classified as "medical data" under the Data Practices Act and are not available to the general public.

## **Immunity from Liability**

Physicians and other medical personnel who perform toxicology tests under this law are immune from civil or criminal liability if the physician believes in good faith that the test is required by the law and the test is given in accordance with established protocol and reasonable medical practice.

## **Reliability of Tests**

Positive test results reported under this law must be obtained from a confirmatory test performed by a licensed, certified, or accredited drug testing laboratory.