

Some observers argue that substance-abusing pregnant women should be held criminally liable for any ill effects their substance abuse causes their children. Punishment could include legal sanctions, court-ordered treatment, and removal of the infant from the home. The **Keeping Children and Families Safe Act** of 2003 actually required states to report infants who were born exposed to illegal substance abuse or who exhibited withdrawal symptoms. The act also included eligibility requirements for child welfare funding to encourage states to create policies requiring CPS notification of infants prenatally exposed to illegal drugs (P.L. 108–36). The problem with the act, as Burke (2007) notes, is that although “states are to have protocols requiring reporting of positive tests, there is no mandate on testing . . . so if hospitals do not test any newborns or their mothers, none would be identified as substance-exposed, and there would be no one to report” (p. 1504). Another problem with the act is that it does not address the role of alcohol exposure (Anthony et al., 2010; Burke, 2007). Although some states explicitly define infants born with positive drug toxicology as abused or neglected, most do not. In the United States, 14 states and the District of Columbia include drug exposure in their definitions of child abuse or neglect and approximately 19 states and the District of Columbia have specific reporting procedures for infants who show evidence at birth of having been exposed to drugs, alcohol, or other controlled substances (Child Welfare Information Gateway, 2016b).

One reason for the lack of uniformity in states’ responses to prenatal neglect is the ongoing debate surrounding the relative significance of the rights of the unborn child versus the rights of the pregnant woman. Another source of confusion is the ambiguity of some states’ statutes concerning the circumstances under which a pregnant woman can be legally sanctioned for causing possible harm to her fetus. A number of scholars have questioned the use of punitive responses toward substance-abusing pregnant women on practical, constitutional, therapeutic, and empirical grounds (e.g., Schroedel & Fiber, 2001). In addition, there is inconsistency in reporting by hospitals to CPS and a lack of formal protocols for determining prenatal substance exposure (Burke, 2007). Although the problem of prenatal neglect continues to be the focus of much theoretical discussion and empirical research, solutions will likely remain elusive for some time.