Curriculum for Addiction Professionals  
Level 1  
Competency VI  
Legal Issues

Legal Issues Related to Women Who Drink During Pregnancy

Federal laws related to alcohol use during pregnancy focus on prevention and treatment of FASD. State and local laws vary. Some States, such as Hawaii and Montana, have laws authorizing FASD prevention and treatment programs. Others, such as New Hampshire and Rhode Island, require that information on FASD be available to couples seeking marriage licenses.

Many States, such as Nevada and North Carolina, require warning signs about FASD to be posted in places where alcohol is sold. At least one State, Missouri, requires physicians to counsel pregnant patients about the dangers of alcohol use. It is important for addiction professionals to stay abreast of State laws related to alcohol use during pregnancy and their effect on treatment and recovery.

Legal requirements, such as reporting alcohol use during pregnancy or counseling patients about the dangers of alcohol use during pregnancy, can affect treatment plans. They also may affect the addiction professional’s interactions with other service providers, such as the amount and type of information shared about a client.
Reporting

- May affect a patient’s employment, insurance coverage, or personal relationships
- State laws may require reporting of alcohol use in pregnant patients

Ref: Alcohol and Pregnancy: Reporting Requirements as of 2006; APIS
http://www.alcoholpolicy.niaaa.nih.gov/index.asp?SEC=%7B5A3B133C-43CD-4EA6-AD78-586F3C089B34%7D&Type=BAS_APIS

Custody Issues

Several States (e.g., Florida, South Carolina) take punitive measures toward alcohol use during pregnancy, such as including prenatal alcohol exposure in their definitions of abuse or neglect. Such measures can be used to remove the child from the parent’s custody. Texas allows involuntary termination of parental rights if a woman causes her child to be born addicted to alcohol. Generally, a mother who abuses substances may be charged with child neglect or abuse. As a result, her children may be taken from her.

In Virginia, physicians, nurses, teachers, and other professionals are required to report certain injuries to children. For purposes of the law, “reason to suspect that a child is abused or neglected” includes a diagnosis by an attending physician within 7 days of a child’s birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. Failure to report can result in fines (SB314 and HB2697). One State, South Dakota, permits involuntary commitment of a pregnant woman who is drinking.
A number of experts fear that such punitive measures may discourage pregnant women with alcohol problems from seeking treatment. Many States (e.g., Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Missouri) take a more supportive approach. They give pregnant women priority for alcohol treatment slots or otherwise provide access to treatment. Others (e.g., California) provide outreach or case management to pregnant women with substance abuse problems. California also may cover residential treatment for pregnant women under Medi-Cal. In addition, Iowa prohibits discrimination against pregnant women seeking alcohol treatment.

State statutes that remove custody from birth mothers of children with an FASD are designed to protect the children. However, the threat of losing custody or actually losing custody can interfere with the woman’s recovery. The goal is to remain sober long term and acquire parenting skills needed to retain child custody and have a healthy, intact family. The addiction professional needs to be familiar with laws in his or her State and their impact on efforts at family reunification and client recovery.

**Territorial and Tribal Laws**

None of the U.S. territories (Guam, Puerto Rico, Virgin Islands) have laws related to alcohol use during pregnancy. Tribal laws vary, but the Indian Child Welfare Act requires the Indian Health Service to make residential treatment available for pregnant women with alcohol problems. In addition, the definition of “health promotion” in the Act includes FASD prevention. The Act also allows the Indian Health Service to make grants to tribes and tribal organizations for various FASD prevention efforts, including alcohol treatment for high-risk women. It also has provisions related to educating Native women about FASD.

**Confidentiality Issues**

New laws, such as the Health Insurance Portability and Accountability Act (HIPAA), may affect activities such as reporting of alcohol use during pregnancy. HIPAA has certain requirements regarding privacy and sharing of client information and records. Confidentiality laws vary by State and may affect the addiction professional’s ability to share information with various social, health, and legal systems such as child welfare agencies. HIPA Advisory: [http://www.hipaadvisory.com/action/faqs/dot.htm](http://www.hipaadvisory.com/action/faqs/dot.htm)

It is essential to be familiar with confidentiality laws in one’s State and to consult with an attorney if necessary. Inappropriate reporting of current or previous alcohol use during pregnancy can jeopardize long-term recovery and may harm the addiction professional’s career.

**Legal Issues Related to Individuals with an FASD**

It is difficult to know how many people in the criminal justice system have an FASD. Data are limited, and populations vary by State. In addition, few systems conduct any screening, and diagnosis is difficult. However, researchers at the University of Washington estimate that 35 percent of individuals with an FASD have been in jail or prison at some point. They also estimate that more than half the people with an FASD have been in trouble with the law.¹
The number of people with an FASD in the criminal justice system is thought to be high. In the United States, approximately 3 million people are in jail or prison. Based on estimates of FASD in the general population, as many as 28,036 inmates could have an FASD.²

High Risk of Clients with an FASD for Repeat Involvement With the Legal System

People with an FASD may have specific types of brain damage that make them likely to get involved in criminal activity:

- Lack of impulse control and trouble thinking of future consequences of current behavior
- Difficulty planning, connecting cause and effect, empathizing, taking responsibility, delaying gratification, or making good judgments
- Tendency toward explosive episodes
- Vulnerability to peer pressure (e.g., may commit a crime to please their friends)

People can take advantage of individuals with an FASD. They may talk them into helping commit crimes. Women with an FASD may get involved with destructive men for food, shelter, attention, or drugs.³ Because persons with an FASD have problems learning from experience, they may repeat crimes and cycle through the legal system multiple times.

It is important for the addiction professional to consider the client’s criminal history and any factors that place the client at risk for further criminal involvement. Addressing issues such as peer pressure in treatment can help set the stage for less risky behavior outside treatment. Establishing routines and finding a healthy, structured environment in aftercare can help the client avoid criminal activity.

The addiction professional may encounter an individual with an FASD who is participating in court-ordered treatment. Such individuals may need help navigating the legal system. The addiction professional can consult with the client’s attorney and assist in educating him or her about FASD. In addition, the addiction professional can assist in finding resources to help the client understand any legal proceedings and requirements. The National Legal Aid & Defender Association or the American Bar Association may be able to identify resources at the local level.

Vulnerability of Individuals with an FASD

Individuals with an FASD are vulnerable not only to criminal activity but also to victimization. Their poor judgment may lead them to associate with people who victimize them physically, emotionally, and financially. Their impulsivity may lead them into dangerous situations. In addition, their impaired sense of boundaries can lead to sexual victimization. Because of their unpredictable nature, they may need 24-hour supervision.⁴,⁵

Even with compensatory strategies, the person with an FASD may be unable to use judgment, consider consequences, or understand abstract situations. Impulsivity is an ongoing issue. Social isolation and loneliness may drive the person to seek out any type of friendship and lead to victimization.
A discussion or pursuit of safeguards for the person may be necessary:

- Recognize that victimization may occur and keep vigilant for situations that may arise in the person’s life.
- Persons with an FASD may need a guardianship of funds to protect them from those who seek to take advantage of their good nature. A trustee can ensure that the necessities of life are covered by person’s funds including rent, food, or clothing. The addiction professional may want to include such provisions in the aftercare plan.
- A person may be exploited by others in many different ways. Discussion of safe environments and connection to community resources may offer the adult a chance to explore other options.
- Role-playing specific scenarios that people face gives them a chance to practice taught skills and perhaps allow them to pursue safe activities.
- Structured time throughout the person’s day, a buddy system, and supervision may help decrease the opportunities for victimization.
- Teaching personal safety issues such as who is a stranger versus who is a friend can help. It is important to be specific and practice.6

## Safety Precautions

- Be aware of potentially dangerous situations.
- Include provisions for financial guardianship in aftercare plan.
- Discuss safe environments and community resources.
- Role-play ways to avoid danger, and teach personal safety issues.
- Provide structure and supervision.

### ADA Compliance in Treatment Plans

The Americans With Disabilities Act requires facilities to accommodate disabilities, such as providing wheelchair ramps and doors with openings wide enough for wheelchairs. In addition, treatment facilities cannot discriminate on the basis of a disability.

The addiction professional will need to incorporate accommodations for persons with an FASD into any treatment plans. For example, lighting at meetings may need to be dimmed to keep the
person with an FASD from becoming overstimulated. Reading materials may need to be adapted to a lower literacy level to accommodate cognitive deficits.

More information on accommodating disabilities can be found in Appendix D of Treatment Improvement Protocol 29, *Substance Use Disorder Treatment for People With Physical and Cognitive Disabilities*.

**Issues Related to Professional Values and Ethics**

Keeping up-to-date on State and Federal laws related to disabilities and substance abuse treatment is important. Laws change as administrations and legislators change. The addiction professional would be wise to find resources on new legislation, such as the local law library or the [FindLaw](https://www.findlaw.com) Web site.

The addiction professional may face some challenging situations dealing with pregnant women or clients with an FASD. It is important to maintain a nonjudgmental attitude and to carefully assess each situation. Being aware of one’s legal obligations, such as reporting alcohol use during pregnancy, can help. If no obligation exists, other options might be more effective in encouraging treatment compliance and ongoing recovery. Protecting children is important but rushing to judgment may do more harm than good.

It is also important to maintain a nonjudgmental attitude when dealing with clients with an FASD. They should not be seen as hopeless and doomed to spend time in jail or to cycle through the justice system. Keeping an open mind and working with court personnel, such as attorneys and social workers, can help the client with an FASD remain sober and achieve a healthy outcome, free of legal problems.

Finally, the addiction professional needs to be mindful of laws that protect persons with disabilities. Persons with an FASD make challenging clients, but they cannot be turned away from treatment on the basis of their disability. If a facility cannot meet their needs, the addiction professional needs to work diligently to find alternatives and make appropriate referrals.

**References**