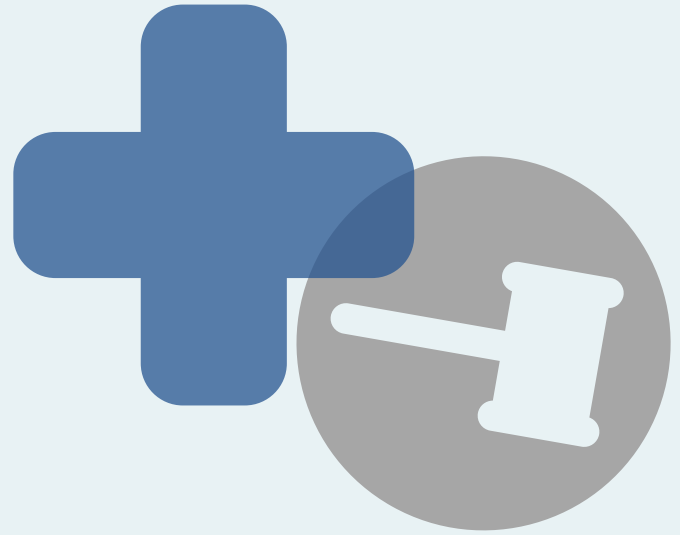


## SECTION 3



# NAVIGATING THE HEALTH CARE + LEGAL SYSTEMS

Substance use during pregnancy is a complicated medical and legal situation to navigate.

You may be worried about **what could happen if you are open and honest with your providers about your substance use**. Telling providers about your substance use can begin a reporting process that ends in family separation.

On the other hand, **you might be worried that if you don't disclose your use, someone may find out anyways**.

And if you have a history of substance use, you know that providers' attitudes and biases can affect the sort of care you get. **You may have experienced discrimination - or worse**.

We believe seeking pregnancy care and treatment for substance use disorders should never be dangerous. But we know it can be.

In this section, we talk about the federal laws around pregnancy, parenting, and substance use. We will also share some information about what might happen if you do or do not tell your provider about your substance use.

Please understand that laws and statutes will **vary widely by state** and some providers, hospitals, and agencies might **interpret the law differently than it is written**. Please **consult with local agencies** that have expertise in how things work where you live.

You can use this information to:

- understand the risks
- weigh the benefits
- make a plan



## BUILDING A RELATIONSHIP

Getting prenatal care improves outcomes for both you and your baby. Ideally, every healthcare decision you and your providers make - you make together. And you make them with your best interest in mind.

We know that substance use and dependence can cause health problems that may or may not be obvious. **We believe that a provider that is informed about all aspects of your health - including your substance use - is better able to provide the care that is most appropriate for you.** But you need to trust each other.

**If your provider understands your substance use they may be able to provide support, offer you better care, connect you with services, and help you reach your goals.**

For example, if you're dependent on opioids, you may be ready to start treatment with **methadone** or **buprenorphine** which can help **keep you safe from risks of illicit use.**

Having a **provider you can trust** is the first step in creating an effective, collaborative relationship. **Tell your provider that this is the type of care you want - and need.**

## DRUG TESTING + INFORMED CONSENT

Many providers test urine or other body fluids without asking or even informing clients. This is bad practice and is **not legal**.

**You have a right to know what tests are being performed on you, why they're being done, and how the results will be used.**

Ideally, you should be given a written document to sign before any tests are done. Then you should be able to ask questions and get answers.

**You have the right to decline any test or procedure.** But if you decline a drug screen (test), some providers will assume it would be positive. This can lead to biased treatment.



Drug screen was discussed.



Patient gave informed consent.



## TYPES OF DRUG TESTING (TOXICOLOGY)


There are many ways to learn if somebody has used drugs including taking a verbal history or performing other tests (hair/blood/urine).


The most common is a **urine drug screen**. Most drug screens work by checking for the byproducts of drug metabolism - not the drugs themselves. These tests can sometimes be inaccurate. **False positives or false negatives are common**, meaning the test might show a substance when none was actually taken or might not show a substance even if one was present.<sup>1-5</sup>

The Substance Abuse and Mental Health Services Administration (SAMHSA), the American College of Obstetricians and Gynecologists (ACOG), and other expert medical associations agree that **any positive screening result should be confirmed with a more accurate test**. For example, a urine test might require additional confirmatory urine and/or blood tests.<sup>2, 3, 5-9</sup>

**Drug screens<sup>4,8</sup> are not good evidence** and should not be used as such in legal matters. Despite this, they are often held against people – whether or not confirmatory results have been completed. A confirmatory test takes longer and costs more, but is more accurate than a screening test.

See:

[ACOG Committee Opinion: Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist](#) 

[SAMHSA: Clinical Guidance for Treating Pregnant and Parenting Women With Opioid Use Disorder and Their Infants](#) 

## URINE DRUG TESTING

What the test detects:

- A urine drug screen doesn't detect psychoactive substances directly.
- It looks for their metabolites.
- False positive and negative results are common.
- If it is positive, confirmatory tests must be done.



## DISCLOSURE

### TALKING TO YOUR HEALTHCARE PROVIDERS ABOUT SUBSTANCE USE

**It is not mandatory for healthcare providers to test pregnant people for drugs.** In most states, **it is not mandatory to report pregnant or parenting clients' substance use to child welfare agencies.**

However, **many healthcare providers are poorly informed about the laws** around mandatory reporting - or they are following guidelines developed by their hospital which are not based on the law.

This means that if a pregnant client tells their provider they're using drugs, **there's a chance this information will be shared with Department of Children and Family Services (DCFS)** or even law enforcement without their consent.

And unfortunately, anyone can make a report to DCSF - even if they are not directly involved in your care. This includes nurses, doctors, lactation consultants, friends, family members, neighbors, or strangers.

Sometimes people make reports because they think it will help. **Ideally, a report should lead to parents being provided with extra resources and support.** However, that's not what typically happens.

In most cases the result is **agency surveillance** (for example: unannounced home visits, speaking with friends and family) and **removal of the baby and any other children** from the parent's custody. **THIS CAUSES HARM.**

**Because of this, people often choose not to disclose their substance use to their providers.** Instead of building confidence and trust, our past experiences, the experiences of our friends and family, and media stories lead us to fear for our safety and mistrust healthcare systems.



**It can be difficult to decide when and if you want to tell a healthcare provider about your substance use.**

**Some providers say they are more likely to be helpful, supportive, and understanding when you tell them about your substance use.** Others distrust people who use drugs and treat them poorly no matter how they find out about your substance use.

## MAKING A PLAN

You can make a plan with your support system before engaging in care and decide the pros and cons of sharing information about your substance use with your provider. This is a case-by-case decision that only you can make based on how you think your provider will respond.

In situations like this, it is especially helpful to have a **doula, friend, family member, or trusted advocate** with you to weigh these decisions. If they can be with you during your appointments, while you labor, and when you give birth it may also help to **demonstrate that you have a strong support system.**

It is important to note though, that **your prenatal provider may not be the provider that is present during your labor and delivery.** Any member of the medical team could file a report, even if other providers on your team do not want a report filed.

If a report is made and it becomes an investigation, your **prenatal providers could be required to talk** about your substance use. But this can also be an opportunity for them to advocate for you.

**A good provider will talk about your strengths, share your successes, and collaborate with you** to help you plan for your and your family's safety.

Deciding whether to consent to a drug test is a very personal decision and there is no right or wrong answer.



## AFTER YOUR BABY IS BORN

Once your baby is born, **if any of the providers suspect the baby might be substance exposed, they may legally test the baby without informing you - even though this is unethical.** If your baby's bodily fluids or tissues test positive for a substance, it could be used against you.

It is important to think about this decision before birthing in a hospital. **During labor it can be very difficult to have these conversations with providers, or to even remember that this may occur.**

### FREE DOWNLOAD

#### My Birth Plan

You can print this worksheet that we created or use it to start building your own unique plan



## IF THERE ARE PROBLEMS

If you get a result on a drug screen or any test that you disagree with, **you have the right to ask for a confirmatory test.**

If the results of the test are to be used in legal matters, such as criminal prosecution or child custody, **the test should be a forensic test.** A forensic test is more accurate and every step of the process is documented. This is the only kind of test which technically can be used as evidence, but unfortunately this is routinely disregarded.<sup>8</sup>

If you are concerned that you are being mistreated, it is important to keep records of your **appointment dates**, the **names of your providers**, and **what happened at each appointment.**

**It can be helpful to have another person present with you throughout this process to help advocate.**

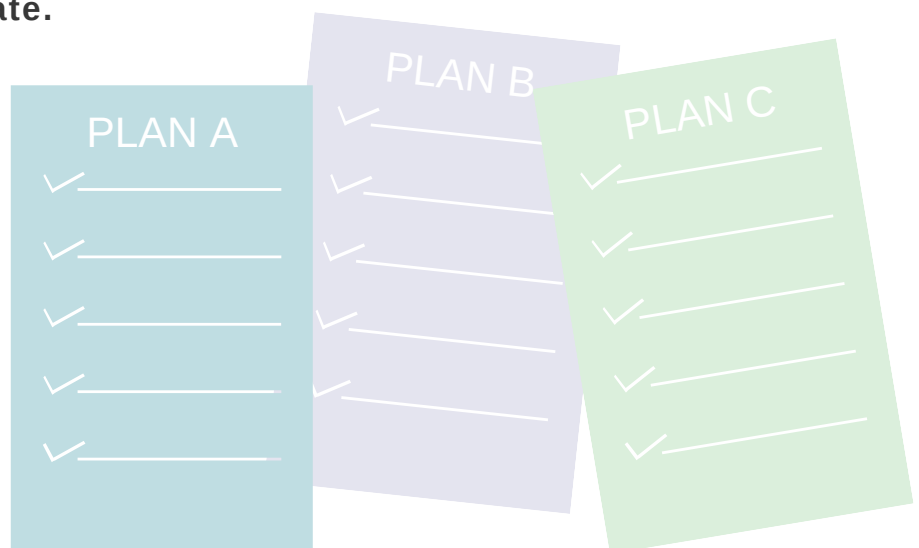
Having a **record of what happened** will help you advocate for yourself if your rights have been violated.

Contact the **patient advocate** associated with the facility, which is a person whose job is to assist patients when there is a dispute with the facility.

If your concern is not resolved, you can **file a grievance** with the government or the facility. Though many people find the patient advocates and the grievance process to be unsatisfying.

To file a grievance if you have Medicaid insurance, go to the website for the **Center for Medicare and Medicaid Services:**

[www.cms.gov/Medicare/Appeals-and-grievances/MMCAG/Grievances.html](http://www.cms.gov/Medicare/Appeals-and-grievances/MMCAG/Grievances.html)



# FEDERAL LEGISLATION THAT MAY AFFECT YOU: CHILD ABUSE PREVENTION AND TREATMENT ACT



"The Child Abuse Prevention and Treatment Act (CAPTA) is the key Federal legislation addressing child abuse and neglect. CAPTA provides Federal funding to States in support of prevention, assessment, investigation, prosecution, and treatment activities and also provides grants to public agencies and nonprofit organizations, including Indian Tribes and Tribal organizations, for demonstration programs and projects."



**Many states' laws do not require drug testing** of pregnant and postpartum people or newborns and **do not mandate reporting of positive drug tests or evidence of prenatal exposure** to criminalized substances, alcohol, or tobacco.

But some child welfare workers may open a case and start an investigation based solely on use of criminalized substances and not because there is evidence of abuse or neglect.

If you have already had **children in the system**, or if you were **involved in the system as a child**, it is more likely that a case will be opened based on your substance use.

There is no federal law requiring all pregnant people be tested for drugs.

CAPTA is a federal law directed only to states - not to hospitals or individual healthcare providers.

CAPTA requires that states have a mechanism for notifying the department of public health and child protective services when babies are born with certain conditions if they want federal funds. Those conditions are:

- when Infants are born **“affected by substance abuse”** (a term not defined in the statute)
- when infants have **“withdrawal symptoms resulting from prenatal drug exposure”**
- when infants are diagnosed with **“a Fetal Alcohol Spectrum Disorder”**

If a report is made to child welfare, it should be done with your consent and your participation - and it should highlight your strengths.




## ADVOCATING FOR YOURSELF

We believe that people who use drugs (PWUD) love their children and deserve the same rights as any other parent, including:

- the **right to bodily autonomy** - to have power and agency over how we use our bodies
- the **right to have children**
- the **right not to have children**
- the **right to parent in a safe and healthy environment** that we choose


We believe these rights are not conditional; **we don't lose these rights because of what we put in our bodies.** A drug test is not a parenting test.

**You deserve to be seen as whole person who is worthy of dignity and respect - and you deserve a supportive community.** That is the basis of Reproductive Justice. 

## PLANS OF SAFE CARE

If you have used substances during your pregnancy, it helps to build a **supportive network of people who can help you navigate both the legal and family surveillance systems.** This can include friends and family, social service providers who work with people who use drugs, as well as doulas and birth workers.

Deciding to disclose your substance use to your provider is a personal decision. **Your healthcare provider may become aware of your substance use even if you don't share this information with them,** so it can be helpful to prepare a Plan of Safe Care before delivery.



This plan outlines your **strengths as a parent** and your **plans for once your baby is born.**

Preparing this ahead of time can help show your providers what a great parent you will be and can help to **provide evidence that they do not need to make a report to DCFS.**

If you believe that a report will be made and a case will be opened, **reach out to a legal group in your area to get connected to a lawyer.**

**NOTE:** A Plan of Safe Care is different from a DCFS Safety Plan which is made when you are being investigated for child neglect or abuse.



# DEFINITIONS OF CHILD ABUSE AND NEGLECT IN ILLINOIS

See [www.ilga.gov](http://www.ilga.gov)



The laws and statues in Illinois governing substance use, pregnancy, and parenting are contradictory and confusing. This makes it difficult to know what to expect. But it's important to know what the laws say and understand that there are things you can do to prepare - including collaborating with your support team to create a Plan of Safe Care.

## Definitions of Child Abuse and Neglect:

Citation: **Comp. Stat. Ch. 325, § 5/3**

**"Abused child"** includes a child whose parent, immediate family member, any person responsible for the child's welfare, any individual residing in the same home as the child, or a paramour of the child's parent:

- Inflicts, causes, allows to be inflicted, or creates a substantial risk of physical injury by other than accidental means that causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function
- Causes a controlled substance to be sold, transferred, distributed, or given to the child under age 18, in violation of the Illinois Controlled Substances Act or Methamphetamine Control and Community Protection Act

**"Neglected child"** includes any child to whom the following applies:

- Is not receiving proper or necessary nourishment or medically indicated treatment, including food or care, that is not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician, or otherwise is not receiving the proper or necessary support or medical or other remedial care as necessary for a child's well-being
- Is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance or a metabolite thereof

## Exceptions:

- A child shall not be considered abused or neglected if the presence of a controlled substance in a child or a newborn is the **result of medical treatment**.

**Citation: Comp. Stat. Ch. 325, § 5/7.3b**

- All persons required to report may refer any pregnant person in this State who has a substance use disorder, as defined in the Substance Use Disorder Act, to the **Department of Human Services**.
- The department shall notify the local Infant Mortality Reduction Network service provider or department-funded prenatal care provider in the area in which the person resides. **The service provider shall prepare a case management plan and assist the pregnant woman in obtaining counseling and treatment from a local substance use disorder treatment program licensed by the department or a licensed hospital that provides substance abuse treatment services.** The local Infant Mortality Reduction Network service provider and department-funded prenatal care provider shall monitor the pregnant woman through the service program.

**Citation: Illinois Statute 325 ILCS 5/4.4**

- DCFS duty to report to State's Attorney. Whenever the Department receives, by means of its statewide toll-free telephone number established under Section 7.6 for the purpose of reporting suspected child abuse or neglect or by any other means or from any mandated reporter under Section 4, a report of a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act or a metabolite thereof, with the exception of a controlled substance or metabolite thereof whose presence in the newborn infant is the result of medical treatment administered to the mother or the newborn infant, the Department must immediately report that information to the State's Attorney of the county in which the infant was born. (Source: P.A. 95-361, eff. 8-23-07.)



## Can I Be Charged with a Crime?

Unfortunately, yes. Even though there is broad consensus that **criminalization and punishment make things worse** and that **substance dependence should be treated as a medical issue** - and not at criminal matter - some prosecutors will choose to file charges against pregnant and parenting people who use drugs. This is because of a principle called "**prosecutorial discretion**" which gives prosecutors wide latitude to decide whether or not they charge a person with a crime, and which charges to file. Pregnant people and parents have been charged with a wide range of crimes.

Learn more at Pregnancy Justice [www.pregnancyjusticeus.org](http://www.pregnancyjusticeus.org)

# PLANS OF SAFE CARE IN ILLINOIS



A Plan of Safe Care (POSC) is a plan designed to ensure the safety and well-being of an infant with prenatal substance exposure following their release from the care of a healthcare provider by addressing the health and substance use treatment needs of the infant and affected family or caregiver.

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Ideally a Plan of Safe Care is created to ensure that you and your family have the support you need to not just keep your family together - but to thrive.

## Your plan should:

- be created by **you and your care team**
- reflect your **goals, values, and preferences**
- be **family-centered**
- outline **your strengths as a parent**
- document **what you have done to care for yourself and your baby** during your pregnancy
- describe **your support network** of family and community members
- include a **plan of care for you and your baby** once you have given birth and gone home together
- include **services** for you and your baby after discharge
- help you get **appropriate, evidence-based treatment** for substance dependence or substance use disorders
- be monitored by a **provider, agency, or community-based program** you have a relationship with and are comfortable with
- be **voluntary**, not coercive

Preparing this plan early in your pregnancy demonstrates to everyone the steps you have taken to be a great parent. It can also provide the evidence everyone needs to **reassure them that they do not need to make a report to DCFS.**

Unfortunately, many providers still mistakenly believe that reporting you to DCFS will lead to you and your family getting services and support.

**Your Plan of Safe Care is proof that you are already have a plan in place for getting what you need and reaching your goals.**

# PLANS OF SAFE CARE FOR INFANTS WITH PRENATAL SUBSTANCE EXPOSURE AND THEIR FAMILIES



While Plans of Safe Care (POSC) for infants affected by substance use have been a requirement in child welfare legislation for years, Illinois does not have a system in place to make sure they get created and used.\*

You and your support team can create a plan to show that you are taking important steps to care for yourself and your baby and that an investigation by DCSF is not needed. To do this, you need to know what the laws and statutes say.

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## Illinois' definitions for who needs Plans of Safe Care:

**Citation: Comp. Stat. Ch. 325, § 5/3; Ch. 20, § 301/1-10; DCFS Pol. Guide 2001.15**

- The term 'substance use disorder' means a spectrum of persistent and recurring problematic behavior that encompasses 10 separate classes of drugs: alcohol; caffeine; cannabis; hallucinogens; inhalants; opioids; sedatives, hypnotics and anxiolytics; stimulants; and tobacco; and other unknown substances leading to clinically significant impairment or distress.
- In policy: The term 'controlled substances' means those substances defined in chapter 720, § 570/102(f), including such drugs as heroin, cocaine, morphine, peyote, PSD, PCP, pentazocine, and methaqualone. Marijuana, hashish, and other derivatives of the plant cannabis sativa are not controlled substances.
- The term 'substance-affected infants' means infants who are born with controlled substances in their system or who have been diagnosed with fetal alcohol syndrome.

## Illinois' Notification/Reporting Requirements:

- All persons required to report may **refer to the Department of Human Services** any pregnant person in this State who is addicted, as defined in the Substance Use Disorder Act.
- **In policy:** Current DCFS policy does not require the mandatory provision of services to substance-affected infants and their families when a report is indicated; fetal alcohol syndrome or the presence of controlled substances in the blood, urine, or meconium of the infant is the only allegation present; and temporary protective custody of the substance-affected infant has not been taken. However, statistics indicate that nearly one-third of substance-affected infants will be neglected within

\* CAPTA REPORT, Addendum E, FY2020 Illinois Dept. of Children and Family Services

the first year of their lives. Therefore, a more aggressive approach will be taken by the DCFS in the investigation, assessment, and provision of services to families with an indicated report involving infants who are born with fetal alcohol syndrome or controlled substances in their systems.

## Assessment of the Infant and Family:

**Citation: Comp. Stat. Ch. 325, § 5/7.3a; DCFS Pol. Guide 2001.15**

The director of the Department of Children and Family Services (DCFS) shall appoint a perinatal coordinator who shall be a physician licensed to practice medicine in all its branches with a specialty certification in pediatric care. Such coordinator, or other designated medical specialists, shall review all reports of suspected medical neglect involving newborns or infants, coordinate the evaluation of the subject of such report, and assist in necessary referrals to appropriate perinatal medical care and treatment. When the perinatal coordinator or other designated medical specialists, alone or in consultation with an infant care review committee established by a medical facility, determine that a newborn or infant child is being neglected, as defined in chapter 325, § 5/3, a designated employee of DCFS shall take the steps necessary to protect the newborn or infant child's life or health, including, but not limited to, taking temporary protective custody.

**In policy:** When investigators indicate reports involving substance-affected infants, they shall do the following:

- Conduct a thorough risk assessment that includes an on-site assessment of the environment in which the infant will be living and an assessment of the caregiver, other adults or children residing with the caregiver, and other persons who will be frequent visitors to the environment
- Take temporary protective custody and open a child welfare case if risk factors are present that place the child in **imminent danger to the child's life or health**
- Open a child welfare case even if temporary protective custody is not taken and refer the case to child welfare staff for a comprehensive assessment

## Plans of Safe Care for Infants with Prenatal Substance Exposure and Their Families

A resource from the National Center on Substance Abuse and Child Welfare

[www.childwelfare.gov/pubPDFs/safecare.pdf](http://www.childwelfare.gov/pubPDFs/safecare.pdf)



## Services for the Parents or Other Caregivers:

Citation: Comp. Stat. Ch. 20, § 301/35-5

The Department of Human Services shall develop and maintain a **comprehensive directory of service providers that provide treatment services to pregnant women, mothers, and their children** in this State. The department may make the information available to recipients but may not require recipients to use specific sources of care. The department shall require that any nonresidential program receiving any funding for treatment services accept women who are pregnant, provided that such services are clinically appropriate.

The department shall create or contract with licensed, certified agencies to develop a program for the care and treatment of addicted pregnant women, addicted mothers, and their children. In implementing the programs, the department shall contract with existing residencies or recovery homes in areas having a disproportionate number of women who abuse alcohol or other drugs and need residential treatment and counseling. **Priority shall be given to addicted and abusing women to whom the following apply:**

- Are **pregnant**
- Have minor **children**
- Are both pregnant and have minor children
- Are **referred by medical personnel** because they either have given birth to a baby addicted to a controlled substance or will give birth to a baby addicted to a controlled substance

The services provided by the programs shall include, but not be limited to, the following:

- Individual **medical care, including prenatal care**, under the supervision of a physician
- Temporary, **residential shelter** for pregnant women, mothers, and children when necessary
- A range of **educational or counseling services**
- **Comprehensive and coordinated social services**, including substance abuse therapy groups for the treatment of alcoholism and other drug abuse and dependency, family therapy groups, programs to develop positive self-awareness, parent-child therapy, and residential support groups



See the Illinois Department of Human Services Substance Use Prevention & Recovery program information for **Pregnant Women, Women with Dependent Children**

## Monitoring Plans of Safe Care:


Citation: Comp. Stat. Ch. 325, § 5/7.3c; DCFS Pol. Guide 2001.15

The Department of Human Services and DCFS shall develop a **community-based system of integrated child welfare and substance abuse services** for the purpose of providing safety and protection for children, improving adult health and parenting outcomes, and improving family outcomes.

DCFS, in cooperation with the Department of Human Services, shall develop **case management** protocols for DCFS clients with substance abuse problems. The departments may establish pilot programs designed to test the most effective approaches to case management. The departments shall evaluate the effectiveness of these pilot programs and report to the governor and the general assembly on an annual basis.

**In policy:** If the family is unwilling to accept the services described in the plan, but will allow DCFS to monitor the family, and the worker has determined that the child is not at imminent risk of harm because of the refusal to accept the services offered, the case shall be **monitored for at least 6 months**. Monitoring means a minimum of twice monthly face-to-face contacts with the infant and family and verification that appropriate medical care is being provided to the child. The supervisor may determine, based on the circumstances present, that only monthly contact is required but the reasons for this decision must be documented in the plan. Intact family cases that are being monitored may be **closed after 6 months** if it has been verified through random urinalysis testing conducted by a drug treatment professional that the parent and other members of the household are not using controlled substances and are no longer abusing alcohol.

If the family's refusal to accept services creates imminent risk to the child's health or safety—for example, continued drug or alcohol usage by the parent or others in the household that places the child at imminent risk of harm, violent behavior, denial of access to the child for monitoring to ensure the child's safety, failure to use an apnea monitor necessary for the child's health and protection, etc.—then the worker shall immediately report the incident to the State central register, requesting that investigative staff take temporary protective custody of the child.

See the Illinois Department of Human Services  
Division of Substance Use Prevention and Recovery services  
(312) 814-3840 



# FINDING HELP WHERE YOU LIVE ILLINOIS



If you believe that a report will be made to DCFS or a case will be opened, you should reach out to a legal group in your area to get connected to a lawyer.

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## **Illinois Legal Aid Online**

"We believe that, with the right knowledge and guidance, people can be their own best advocates. We mobilize people with plain-language, 24/7 tools - in three languages - so families can understand and assert their legal rights. ILAO helps people, who are unable to find or afford attorneys, open opportunities for justice."

[www.illinoislegalaid.org](http://www.illinoislegalaid.org)

[www.illinoislegalaid.org/get-legal-help](http://www.illinoislegalaid.org/get-legal-help)

[www.illinoislegalaid.org/legal-information/child-abuse-or-neglect](http://www.illinoislegalaid.org/legal-information/child-abuse-or-neglect)

## **Illinois State Bar Association**

ISBA's booklet, "Guide for Parents: Juvenile Court Abuse & Neglect Proceedings" is intended to provide parents with general information and advice about the child welfare system, DCFS.

[www.isba.org/sites/default/files/teachers/publications/abuse.pdf](http://www.isba.org/sites/default/files/teachers/publications/abuse.pdf)

## **Ascend Justice**

"Our mission is to empower individuals and families impacted by gender-based violence or the child welfare system to achieve safety and stability through holistic legal advocacy and systemic reform. We are working toward strong communities where people have the power to navigate fair systems and overcome violence."

[www.ascendjustice.org](http://www.ascendjustice.org)

You can fill out an intake form  
and email it to [intake@ascendjustice.org](mailto:intake@ascendjustice.org)

[www.ascendjustice.org/dcsf-cases](http://www.ascendjustice.org/dcsf-cases)

[www.ascendjustice.org/child-abuse-accusations](http://www.ascendjustice.org/child-abuse-accusations)

 (312) 971-5932



# IF YOU ARE ACCUSED OF ABUSE OR NEGLECT

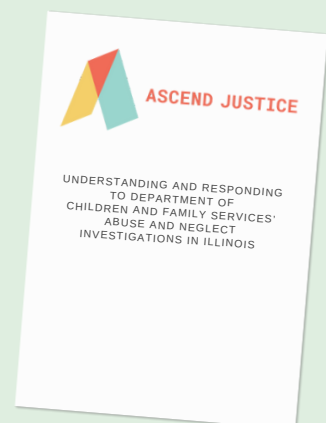
If you are being **investigated** by DCFS:

- Ask **what the allegations** are against you and if you are being investigated for "abuse" or "neglect"
- Ask when and how you are alleged to have abused or neglected a child
- Be polite and courteous, but **say as little as possible** - Don't help the investigators - Don't say more than you need to
- **Never invite a DCFS social worker or investigator into your home** unless they have a warrant or court order - If someone insists on searching, say "I do not consent to a search."
- **Do not open the door and allow the DCSF agent look into your home** - If you do they may say that they see something that creates an "emergency situation" even if it is not true - If you invite an investigator into your home, you have just waived your Federally-protected fourth amendment constitutional protection.
- **Record and document your interactions** with DCFS - ask your friends, family members, and providers to do the same - This is especially important for any conversations DCFS has with your children - Provide your own recorder and keep your own copy
- Contact a **legal aid organization** and an **attorney**
- If you are being accused of medical neglect or physical abuse, **have your child's pediatrician or other medical providers do a thorough exam of your baby and children**

Essential Resource:

**Understanding and Responding to Department of Children and Family Services' Abuse and Neglect Investigations in Illinois** - *A Basic Guide for Illinois Parents and Other Caregivers*

[www.ascendjustice.org/child-abuse-accusations](http://www.ascendjustice.org/child-abuse-accusations)



## IF YOU ARE ACCUSED OF ABUSE OR NEGLECT



**NOTE:** While you can refuse to talk to DCFS investigators, you may be seen as being “non-cooperative.”

**If you allow your child to be interviewed, they have the right to have someone present when the investigator interviews them if it will make them feel more comfortable.**

You are entitled to provide the contact information for people you think can support your case. **DCFS investigators are required to speak to at least two people who you identify as character witnesses before making a decision in your case.**

**You should provide any and all information that supports your case.** This includes information provided by **your medical providers and support team.** DCFS has a constitutionally mandated duty to gather and consider all available evidence in your favor. To ensure DCFS meets this duty, you can provide any evidence you might have that may help to show you did not abuse or neglect a child.


See "[Understanding and Responding to Department of Children and Family Services' Abuse and Neglect Investigations in Illinois - A Basic Guide for Illinois Parents and Other Caregivers](#)" from Ascend Justice.

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**NOTE:** If you become involved in juvenile or family court proceedings:

- Ask who your assigned public defender is and contact them
- Wait to consult with legal aid or an attorney before agreeing to a DCSF Service Plan or Safety Plan

Many families have reported that they have had challenges with receiving their DCFS service plan in a timely fashion, understanding the requirements, obtaining the appropriate referrals to service providers, and reaching their caseworkers. This has sadly resulted in family separation or in delays in reunifying with their children.



# NOTES:

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We recommend reading:

**Confronting Pregnancy Criminalization: A Practical Guide for Healthcare Providers, Lawyers, Medical Examiners, Child Welfare Workers, and Policymakers**

[www.pregnancyjusticeus.org/confronting-pregnancy-criminalization/](http://www.pregnancyjusticeus.org/confronting-pregnancy-criminalization/)

