



Current Through
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Parental Drug Use as Child Abuse: Summary of State Laws

Abuse of drugs or alcohol by parents and other caregivers can have negative effects on the health, safety, and well-being of children. Approximately 47 States, the District of Columbia, Guam, and the U.S. Virgin Islands have laws within their child protection statutes that address the issue of substance abuse by parents.¹ Two areas of concern are the harm caused by prenatal drug exposure and the harm caused to children of any age by exposure to illegal drug activity in their homes or environment.

¹ The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current through May 2009. The statutes in American Samoa, Connecticut, New Jersey, Northern Mariana Islands, Puerto Rico, and Vermont do not currently address the issue of children exposed to illegal drug activity.

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Prenatal Drug Exposure

The Child Abuse Prevention and Treatment Act (CAPTA) requires States to have policies and procedures in place to notify child protective services (CPS) agencies of substance-exposed newborns (SENs) and to establish a plan of safe care for newborns identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.² Several States currently address this requirement in their statutes. Approximately 16 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; 12 States and the District of Columbia include this type of exposure in their definitions of child abuse or neglect.³

Some States specify in their statutes the response the CPS agency must make to reports of SENs. Hawaii and Maine require the State agency to develop a plan of safe care for the infant. California, Maryland, Minnesota, Missouri, Nevada, and the District of Columbia require the agency to complete an assessment of needs for the infant and for the infant's family and make a referral to appropriate services. Illinois and Minnesota require mandated reporters to report when they suspect that pregnant women are substance abusers so that the women can be referred for treatment.

Children Exposed to Illegal Drug Activity

There is increasing concern about the negative effects on children when parents or other members of their households abuse alcohol or drugs or engage in other illegal drug-related activity, such as the manufacture of methamphetamines in home-based laboratories. Many States have responded to this problem by expanding the civil definition of child abuse or neglect to include this concern. Specific circumstances that are considered child abuse or neglect in some States include:

² 42 U.S.C. 5101 et seq., as amended by the Keeping Children and Families Safe Act of 2003 (P.L. 108-36). For more information on these issues, as well as training resources and technical assistance, visit the website of the National Center on Substance Abuse and Child Welfare at www.ncsacw.samhsa.gov.

³ Arizona, California, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, Oklahoma, Texas, and Utah have enacted specific reporting procedures for drug-exposed infants. Arkansas, Colorado, Florida, Illinois, Indiana, Minnesota, North Dakota, South Carolina, South Dakota, Texas, Virginia, and Wisconsin include exposure of infants to drugs in their definitions of child abuse or neglect.

- Manufacturing a controlled substance in the presence of a child or on premises occupied by a child⁴
- Exposing a child to, or allowing a child to be present where, chemicals or equipment for the manufacture of controlled substances are used or stored⁵
- Selling, distributing, or giving drugs or alcohol to a child⁶
- Using a controlled substance that impairs the caregiver's ability to adequately care for the child⁷
- Exposing a child to the criminal sale or distribution of drugs⁸

Approximately 25 States and the U.S. Virgin Islands address in their criminal statutes the issue of exposing children to illegal drug activity.⁹ For example, in 14 States the manufacture or possession of methamphetamine in the presence of a child is a felony,¹⁰ and in four States, the manufacture or possession of any controlled substance in the presence of a child is considered a felony.¹¹ California, Mississippi, Montana, North Carolina, Ohio, and Washington State have enacted enhanced penalties for any conviction for the manufacture of methamphetamine when a child was on the premises where the crime occurred.

Exposing children to the manufacture, possession, or distribution of illegal drugs is considered child endangerment in seven States.¹² The exposure of a child to drugs or drug paraphernalia is a crime in North Dakota, Utah, and the Virgin Islands. In North Carolina and Wyoming, selling or giving an illegal drug to a child by any person is a felony.

⁴ Colorado, Illinois, Indiana, Iowa, Montana, New Mexico, Oregon, South Dakota, Tennessee, Washington, Wisconsin, and the District of Columbia.

⁵ Arizona, Arkansas, Iowa, New Mexico, North Dakota, and Oregon.

⁶ Arkansas, Florida, Hawaii, Illinois, Iowa, Minnesota, Texas, and Guam.

⁷ Iowa, Kentucky, Minnesota, New York, Rhode Island, and Texas.

⁸ Montana, South Dakota, Virginia, and the District of Columbia.

⁹ Alabama, Alaska, California, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Utah, Virginia, Washington, West Virginia, and Wyoming currently address the issue in their criminal statutes.

¹⁰ Georgia, Illinois, Iowa, Kansas, Louisiana, Montana, Nebraska, New Hampshire, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wyoming.

¹¹ Alabama, Idaho, Louisiana, and Ohio.

¹² Alaska, Delaware, Illinois, Iowa, Kansas, Missouri, and Montana.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

Alabama**Ala. Code § 13A-12-218 (LexisNexis through 2009 Reg. Sess.)**

A person commits the crime of unlawful manufacture of a controlled substance in the first degree if he or she manufactures a controlled substance enumerated in Schedules I to V, inclusive, or possesses precursor substances in any amount with the intent to unlawfully manufacture a controlled substance, and two or more of the following conditions occurred in conjunction with that violation:

- Possession of a firearm
- Use of a booby trap
- The illegal possession, transportation, or disposal of hazardous or dangerous materials, or while transporting or causing to be transported materials in furtherance of a clandestine laboratory operation, created a substantial risk to human health or safety or a danger to the environment
- A clandestine laboratory operation that was to take place or did take place within 500 feet of a residence, place of business, church, or school
- A clandestine laboratory operation that actually produced any amount of a specified controlled substance
- A clandestine laboratory operation for the production of controlled substances listed in Schedule I or Schedule II
- The presence of a person under age 17 during the manufacturing process

Unlawful manufacture of a controlled substance in the first degree is a Class A felony.

Schedules I to V controlled substances include opiates, opiate derivatives, hallucinogens, stimulants, depressants, and narcotics, as listed in §§ 20-2-23, 20-2-25, 20-2-27, 20-2-29, and 20-2-31.

Alaska**Alaska Stat. § 11.51.110 (LexisNexis through 1-9-09)**

A person commits the crime of endangering the welfare of a child in the second degree if the person, while caring for a child under age 10:

- Causes or allows the child to enter or remain in a dwelling or vehicle in which a controlled substance is stored in violation of chapter 11.71
 - Is impaired by an intoxicant, whether or not prescribed for the person, and there is no third person who is at least age 12 and not impaired by an intoxicant present to care for the child
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American Samoa

This issue is not addressed in the statutes reviewed.

Arizona**Ariz. Rev. Stat. Ann. § 13-3623(C) (LexisNexis through 2009 1st Spec. Sess.)**

For the purposes of subsections A and B of this section, the terms “endangered” and “abuse” include, but are not limited to, circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic, or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of § 13-3407(A)(3) or (4).

Notwithstanding any other provision of this section, a violation committed under circumstances described in this subsection does not require that a person have care or custody of the child or vulnerable adult.

Ariz. Rev. Stat. Ann. § 13-3620(E) (LexisNexis through 2009 1st Spec. Sess.)

A health-care professional who, after a routine newborn physical assessment of a newborn infant's health status, or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in § 13-3401 shall immediately report this information, or cause a report to be made, to Child Protective Services in the Department of Economic Security. For the purposes of this subsection, 'newborn infant' means a newborn infant who is under 30 days of age.

Arkansas**Ark. Ann. Code § 12-12-503(12)(B) (LexisNexis through 2008 1st Ex. Sess.)**

"Neglect" shall include:

- Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child
- At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child

Ark. Ann. Code § 12-12-503(2) (LexisNexis through 2000 1st Ex. Sess.)

"Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person age 18 or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare, but excluding the spouse of a minor:

- Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions
- Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
 - » Marijuana
 - » Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service
 - » A narcotic
 - » An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug
- Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine

California**Cal. Penal Code § 11165.13 (LexisNexis through 5-6-09)**

A positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to law.

If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to a county welfare or probation department and not to a law enforcement agency.

Cal. Health & Safety Code § 11379.7 (LexisNexis through 5-6-09)

Except as provided below, any person convicted of a violation of § 11379.6(a) [manufacture of a controlled substance] or § 11383 [possession of the chemicals or equipment used for such manufacture], or of an attempt to violate those sections, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under age 16 is present, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of 2 years in the State prison.

Any person convicted of a violation of § 11379.6(a) or § 11383, or of an attempt to violate those sections, as those sections relate to methamphetamine or phencyclidine, where the commission of the crime causes any child under age 16 to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of 5 years in the State prison.

As used in this section, "structure" means any house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment.

Colorado**Colo. Rev. Stat. Ann § 18-6-401(1)(c) (LexisNexis through 12-1-08)**

A person commits child abuse if, in the presence of a child, or on the premises where a child is found or resides, or in a vehicle containing a child, the person knowingly engages in the manufacture or attempted manufacture of a controlled substance, as defined by § 18-18-102(5), or knowingly possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of a controlled substance. It shall be no defense to the crime of child abuse that the defendant did not know that a child was present, a child could be found, a child resided on the premises, or a vehicle contained a child.

A parent or lawful guardian of a child or a person having the care or custody of a child who knowingly allows the child to be present or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know that another person is engaged in the manufacture or attempted manufacture of methamphetamine commits child abuse.

A parent or lawful guardian of a child or a person having the care or custody of a child who knowingly allows the child to be present or reside at a premises or to be in a vehicle where the parent, guardian, or person having care or custody of the child knows or reasonably should know that another person possesses ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to use the product as an immediate precursor in the manufacture of methamphetamine commits child abuse.

Colo. Rev. Stat. Ann. § 19-3-401(3)(b)-(c) (LexisNexis through 12-1-08)

A newborn child who is not in a hospital setting shall not be taken into temporary protective custody for a period of longer than 24 hours without an order of the court. The court orders shall not be required in the following circumstances:

- When a newborn child is identified by a physician, registered nurse, licensed practical nurse, or physician's assistant engaged in the admission, care, or treatment of patients as being affected by substance abuse or demonstrating withdrawal symptoms resulting from prenatal drug exposure
- When the newborn child is subject to an environment exposing the newborn child to a laboratory for manufacturing controlled substances

Colo. Rev. Stat. Ann. § 19-1-103(1)(a) (LexisNexis through 12-1-08)

"Abuse" or "child abuse or neglect" means an act or omission in one of the following categories that threatens the health or welfare of a child:

- Any case in which, in the presence of a child, or on the premises where a child is found or resides, a controlled substance, as defined in § 18-18-102(5), is manufactured or attempted to be manufactured
- Any case in which a child tests positive at birth for either a Schedule I controlled substance, including opiates, opiate derivatives, hallucinogens, stimulants, and depressants that have no legitimate medical use [as defined in § 18-18-203], or a Schedule II controlled substance, including any potentially addictive substance that is used or manufactured contrary to its current accepted medical use [as defined in § 18-18-204], unless the child tests positive for a Schedule II controlled substance as a result of the mother's lawful intake of such substance as prescribed

Connecticut

This issue is not addressed in the statutes reviewed.

Delaware**Del. Ann. Code Tit. 11, § 1102 (LexisNexis through 4-17-09)**

A person is guilty of endangering the welfare of a child when the person commits any offense set forth in Chapter 47 of Title 16 [Uniform Controlled Substances Act] in any dwelling, knowing that any child younger than age 18 is present in the dwelling at the time.

District of Columbia**D.C. Code Ann. § 4-1321.02(d) (LexisNexis through 12-24-08)**

Any licensed health professional, law enforcement officer, or humane officer of any agency charged with the enforcement of animal cruelty laws, except an undercover officer whose identity or investigation might be jeopardized, shall report immediately, in writing, to the Child and Family Services Agency, that the law enforcement officer, humane officer of any agency charged with enforcement of animal cruelty laws, or health professional has reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to exposure to drug-related activity.

D.C. Code Ann. § 4-1301.06a (LexisNexis through 12-24-08)

Upon receipt of a report that a child is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth; has a controlled substance in his or her body as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or is regularly exposed to illegal drug-related activity in the home, the agency shall:

- Commence an initial investigation in accordance with §§ 4-1301.04(b) and 4-1301.06
- Determine whether the child should be removed temporarily from the home environment or can be protected in the home environment
- Commence a social investigation and provide social services if the initial investigation results in a substantiated report

A social investigation shall include a determination of whether there is reasonable evidence that:

- Any member of the child's home environment uses drugs illegally, is dependent on drugs, or needs drug abuse treatment
- The child is exposed regularly to drug use in the home environment
- The distribution or sale of illegal drugs or drug paraphernalia occurs in the child's home environment
- Drug-related activity has contributed to or is likely to contribute to violent conduct within the child's home environment

The social services shall include:

- Provision of drug treatment to any member of the child's home environment who is determined to be in need of drug treatment
- Measures to facilitate action by the child's family, with the assistance of the agency and the police, if necessary, to eliminate the child's exposure to drug use or to the distribution or sale of illegal drugs or drug paraphernalia in the home environment
- Any other service authorized or required by this subchapter or other applicable laws or rules of the District of Columbia

D.C. Code Ann. § 16-2301(9) (LexisNexis through 12-24-08)

"Neglected child" means a child:

- Who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth
- In whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian
- Who is regularly exposed to illegal drug-related activity in the home

The term "drug-related activity" means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

Florida**Fla. Stat. Ann. § 39.01(32) (LexisNexis through Fla. 2009 Legis. Serv., Ch. 21)**

Harm to a child's health or welfare can occur when any person:

- Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child, any prior history of injuries to the child, the location of the injury on the body of the child, the multiplicity of the injury, and the type of trauma inflicted. Such injury includes, but is not limited to, purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment, or that result in sickness or internal injury.
- Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:
 - » A test, administered at birth, that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant
 - » Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage

For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I [a substance that has a high potential for abuse and no currently accepted medical use] or Schedule II [a substance that has a high potential for abuse and has a currently accepted but severely restricted medical use] of § 893.03.

Georgia**Ga. Code Ann. § 16-5-73(b) (LexisNexis through 2008 Reg. Sess.)**

Any person who intentionally causes or permits a child to be present where any person is manufacturing methamphetamine or possessing a chemical substance with the intent to manufacture methamphetamine shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than 2 years nor more than 15 years.

Any person who violates the paragraph above wherein a child receives serious injury as a result of such violation shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than 5 years nor more than 20 years.

Guam**Guam Code Ann. Tit. 19, § 13101(t)(5) (LexisNexis through 8-26-08)**

"Harm to a child's physical health or welfare" occurs in a case where there exists evidence of injury, including, but not limited to, any case where the child is provided with a controlled substance as defined by the Criminal and Correctional Code. However, this paragraph shall not apply to a child's family who provides such drugs to the child pursuant to the direction or prescription of a practitioner.

Hawaii

Haw. Rev. Stat. § 587-89 (LexisNexis through 2008 Reg. Sess.)

In conformity to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a) as amended by the Keeping Children and Families Safe Act of 2003 (Public Law 108-36), the Department of Human Services shall implement and operate a statewide program relating to child abuse and neglect that includes:

- Policies and procedures, including, but not limited to, appropriate referrals to child protective service systems and other appropriate services, to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure, including a requirement that health-care providers involved in the delivery or care of an affected infant notify child protective services of the occurrence of the condition in the infant, provided that the notification shall not be construed to require criminal prosecution for any illegal action
- Development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms
- Triage procedures for the appropriate referral to a community organization or voluntary preventive service for a child who is not at risk of imminent harm and for the child's family

Haw. Rev. Stat. § 350-1 (LexisNexis through 2008 Reg. Sess.)

"Child abuse or neglect" means the acts or omissions of any person or legal entity in any manner or degree related to the child, residing with the child, or otherwise responsible for the child's care, that have resulted in harm to the physical or psychological health or welfare of the child, who is under age 18, or have subjected the health or welfare of the child to be subject to any reasonably foreseeable, substantial risk of being harmed.

The acts or omissions are indicated for the purposes of reports by circumstances that include, but are not limited to, when the child is provided with dangerous, harmful, or detrimental drugs, provided that this paragraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner.

Idaho

Idaho Code § 37-2737A(1)-(2) (LexisNexis through 2008 Reg. Sess.)

Except as authorized in this chapter, it is unlawful for any person to manufacture or deliver, or possess with the intent to manufacture or deliver, a controlled substance as defined in Schedules I, II, III, and IV in this chapter, upon the same premises where a child under age 18 is present. Schedules I, II, III, and IV controlled substances include opiates, hallucinogens, cannabis, stimulants, depressants, anabolic steroids, hormones, and narcotics [as defined in §§ 37-2705, 37-2707, and 37-2709].

As used in this section, "premises" means any:

- Motor vehicle or vessel
- Dwelling or rental unit including, but not limited to, apartment, townhouse, condominium, mobile home, manufactured home, motel room, or hotel room
- Dwelling house, its curtilage, and any other outbuildings

Illinois**Ill. Comp. Stat. Ann. Ch. 325, § 5/7.3b (LexisNexis through 2009 Reg. Sess.)**

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 Alcoholism and Other Drug Abuse and Dependency Act.

The Department of Human Services 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 abuse service provider licensed by the Department of Human Services 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.

Ill. Comp. Stat. Ann. Ch. 325, § 5/3 (LexisNexis through 2009 Reg. Sess.)

“Abused child” means a child whose parent or immediate family member, or any person responsible for the child’s welfare, or any individual residing in the same home as the child, or a paramour of the child’s parent causes to be sold, transferred, distributed, or given to such child under age 18, a controlled substance, as defined by law, or in violation of the Methamphetamine Control and Community Protection Act, except for controlled substances that are prescribed in accordance with the Illinois Controlled Substances Act and are dispensed to such child in a manner that substantially complies with the prescription.

“Neglected child” means any child who is not receiving the proper or necessary nourishment or medically indicated treatment including food or care not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician acting alone or in consultation with other physicians or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child’s well-being, or other care necessary for his or her well-being, including adequate food, clothing, and shelter; or who is abandoned by his or her parents or other person responsible for the child’s welfare without a proper plan of care;... or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined in the Illinois Controlled Substances Act or a metabolite thereof.

Ill. Comp. Stat. Ann., Ch. 720, § 646/50 (LexisNexis through 2009 Reg. Sess.)

Methamphetamine-related child endangerment:

- It is unlawful to engage in methamphetamine-related child endangerment. A person engages in methamphetamine-related child endangerment when the person knowingly endangers the life and health of a child by exposing or allowing exposure of the child to a methamphetamine-manufacturing environment.
- A person who violates this paragraph is guilty of a Class 2 felony.

Aggravated methamphetamine-related child endangerment:

- It is unlawful to engage in aggravated methamphetamine-related child endangerment. A person engages in aggravated methamphetamine-related child endangerment when the person [commits methamphetamine-related child endangerment] and the child experiences death, great bodily harm, disability, or disfigurement as a result of the methamphetamine-related child endangerment.
- A person who violates this paragraph is guilty of a Class X felony, subject to a term of imprisonment of not less than 6 years and not more than 30 years, and subject to a fine not to exceed \$100,000.

Ill. Comp. Stat. Ann. Ch. 705, § 405/2-3(1)(c) (LexisNexis through 2009 Reg. Sess.)

Those who are neglected include any newborn infant whose blood, urine, or meconium contains any amount of a controlled substance as defined § 102(f) of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant is the result of medical treatment administered to the mother or the newborn infant.

Indiana**Ind. Code Ann. §§ 31-34-1-10; 31-34-1-11 (LexisNexis through 2008 2nd Reg. Sess.)**

Except as provided in statute, a child is a "child in need of services" if:

- The child is born with fetal alcohol syndrome or any amount, including a trace amount, of a controlled substance or a legend drug in the child's body.
- The child has an injury, has abnormal physical or psychological development, or is at a substantial risk of a life-threatening condition that arises or is substantially aggravated because the child's mother used alcohol, a controlled substance, or a legend drug during pregnancy.
- The child needs care, treatment, or rehabilitation that the child is not receiving or is unlikely to be provided or accepted without the coercive intervention of the court.

Ind. Code Ann. § 31-34-1-2 (LexisNexis through 2008 2nd Reg. Sess.)

A child is a "child in need of services" if before the child becomes age 18:

- The child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian.
- The child needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the court.

Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

Iowa**Iowa Code Ann. § 232.68(2)(f), (2)(g) (LexisNexis through 2008 Supp.)**

"Child abuse" or "abuse" includes:

- An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.
- The person responsible for the care of a child has, in the presence of the child, manufactured a dangerous substance, or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

Iowa Code Ann. § 232.77(2) (LexisNexis through 2008 Supp.)

If a health practitioner discovers in a child physical or behavioral symptoms of the effects of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, which were not prescribed by a health practitioner, or if the health practitioner has determined through examination of the natural mother of the child that the child was exposed *in utero*, the health practitioner may perform or cause to be performed a medically relevant test, as defined in § 232.73, on the child.

The practitioner shall report any positive results of such a test on the child to the Department of Human Services. The department shall begin an investigation pursuant to law upon receipt of such a report.

A positive test result obtained prior to the birth of a child shall not be used for the criminal prosecution of a parent for acts and omissions resulting in intrauterine exposure of the child to an illegal drug.

Iowa Code Ann. § 232.2(6) (LexisNexis through Ia. 2009 Legis. Serv., S.F. 446)

“Child in need of assistance” means an unmarried child:

- Whose parent’s or guardian’s mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care
- In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child’s parent, guardian, or custodian
- Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance

“In the presence of a child” means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child’s home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

“Dangerous substance” means any of the following:

- Amphetamine, its salts, isomers, or salts of its isomers
- Methamphetamine, its salts, isomers, or salts of its isomers
- A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in the process of manufacturing or as a precursor or intermediary in the manufacturing of an illegal or controlled substance

Iowa Code Ann. § 726.6 (LexisNexis through 2008 Supp.)

A person who is the parent, guardian, or person having custody or control over a child or a minor under age 18 with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured or where a product is possessed in violation of the law.

A person who commits child endangerment resulting in the death of a child or minor is guilty of a Class B felony. Notwithstanding § 902.9(2), a person convicted of a violation of this subsection shall be confined for no more than 50 years.

A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a Class C felony.

A person who commits child endangerment resulting in bodily injury to a child or minor or child endangerment that does not result in a serious injury is guilty of a Class D felony.

A person who commits child endangerment that is not subject to penalty [as a Class C or D felony] is guilty of an aggravated misdemeanor.

Kansas**Kan. Ann. Stat. § 21-3608a (LexisNexis through Kan. 2009 Legis. Serv., H.B. 2236)**

Aggravated endangering a child is:

- Intentionally causing or permitting a child under age 18 to be placed in a situation in which the child's life, body, or health is injured or endangered
- Recklessly causing or permitting a child under age 18 to be placed in a situation in which the child's life, body, or health is injured or endangered
- Causing or permitting such child to be in an environment where a person is selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture any methamphetamine
- Causing or permitting such child to be in an environment where drug paraphernalia or volatile, toxic, or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine

Aggravated endangering a child is a severity level 9, person felony.

Kentucky**Ky. Rev. Stat. Ann. § 214.160(3)-(4) (LexisNexis through 2008 1st Ex. Sess.)**

Any physician or person legally permitted to engage in attendance upon a pregnant woman may administer to each newborn infant born under that person's care a toxicology test to determine whether there is evidence of prenatal exposure to alcohol, a controlled substance, or a substance identified on the list provided by the Cabinet for Health and Family Services, if the attending person has reason to believe, based on a medical assessment of the mother or the infant, that the mother used any such substance for a nonmedical purpose during the pregnancy.

The circumstances surrounding any positive toxicology finding shall be evaluated by the attending person to determine if abuse or neglect of the infant, as defined under § 600.020(1), has occurred and whether investigation by the Cabinet for Health and Family Services is necessary.

Ky. Rev. Stat. Ann. § 600.020(1)(c) (LexisNexis through 2008 1st Ex. Sess.)

"Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his or her parent, guardian, or other person exercising custodial control or supervision of the child, engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse.

Louisiana**La. Rev. Stat. § 14:93 (LexisNexis through 2008 Reg. Sess.)**

Cruelty to juveniles is:

- The intentional or criminally negligent exposure by anyone age 17 or older of any child under age 17 to a clandestine laboratory operation [for the unlawful manufacture of methamphetamine], as defined by Rev. Stat. 40:983, in a situation where it is foreseeable that the child may be physically harmed
- The intentional or criminally negligent allowing of any child under age 17 by any person over age 17 to be present during the manufacturing, distribution, or purchasing or attempted manufacturing, distribution, or purchasing of a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Law

Lack of knowledge of the child's age shall not be a defense. Whoever commits the crime of cruelty to juveniles shall be fined not more than \$1,000 or imprisoned with or without hard labor for not more than 10 years, or both.

Maine**Me. Rev. Stat. Tit. 22, § 4004-B (LexisNexis through 3-19-09)**

The department shall act to protect infants born identified as being affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, regardless of whether or not the infant is abused or neglected. The department shall:

- Receive reports of infants who may be affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure
- Promptly investigate all reports received of infants born who may be affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure
- Determine whether or not each infant reported is affected by illegal substance abuse or suffers from withdrawal symptoms resulting from prenatal drug exposure
- Determine whether or not the infant is abused or neglected and, if so, determine the degree of harm or threatened harm in each case
- For each infant whom the department determines to be affected by illegal substance abuse or to be suffering from withdrawal symptoms resulting from prenatal drug exposure, develop, with the assistance of any health-care provider involved in the mother's or the child's medical or mental health care, a plan for the safe care of the infant and, in appropriate cases, refer the child or mother or both to a social service agency or voluntary substance abuse prevention service

Me. Rev. Stat. Tit. 22, § 4011-B (LexisNexis through 3-19-09)

A health-care provider involved in the delivery or care of an infant who the provider knows or has reasonable cause to suspect has been born affected by illegal substance abuse or is suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, shall notify the department of that condition in the infant. The report required by this subsection must be made in the same manner as reports of abuse or neglect required by this subchapter.

This section, and any notification made pursuant to this section, may not be construed to establish a definition of abuse or neglect.

This section, and any notification made pursuant to this section, may not be construed to require prosecution for any illegal action, including, but not limited to, the act of exposing a fetus to drugs or other substances.

Maryland**Md. Family Law Ann. § 5-706.3(d) (LexisNexis through 2009 Reg. Sess.)**

The Department of Human Resources, in cooperation with the Department of Health and Mental Hygiene, shall develop intervention systems in at least four counties designated by the Secretary of Human Resources that include drug treatment for a mother of a child who is born drug-exposed and supportive services for the family of the child.

An intervention shall be initiated when a child is born drug-exposed and medical personnel have determined that the child is at a high risk of abuse or neglect.

Subject to the provisions above, the local Department of Social Services and the Department of Health and Mental Hygiene shall assist the mother of a child who is born drug-exposed in obtaining drug treatment and providing supportive services to maintain family unity.

A CINA [Child in Need of Assistance] petition shall be filed on behalf of a child who is born drug-exposed if:

- The mother refuses the recommended level of drug treatment or does not successfully complete the recommended level of drug treatment.
- The mother is unable to provide adequate care for the child.
- The father is unable to provide adequate care for the child.

Md. Family Law Ann. § 5-710(b) (LexisNexis through 2009 Reg. Sess.)

Promptly after receiving a report from a hospital or health practitioner of suspected neglect related to drug abuse and conducting an appropriate investigation, the local department may file a petition alleging that the child is in need of assistance under Title 3, Subtitle 8 of the Courts Article, and offer the mother admission into a drug treatment program.

The local department may initiate a judicial proceeding to terminate a mother's parental rights, if the local department offers the mother admission into a drug treatment program under this subsection within 90 days after the birth of the child and if the mother:

- Does not accept admission to the program or its equivalent within 45 days after the offer is made
- Does not accept the recommended level of drug treatment within 45 days after the offer is made
- Fails to fully participate in the program or its equivalent

Md. Crts. & Jud. Proc. Code Ann. § 3-818 (LexisNexis through 2009 Reg. Sess.)

Within 1 year after a child's birth, there is a presumption that a child is not receiving proper care and attention from the mother for purposes of § 3-801(f)(2) of this subtitle if:

- The child was born exposed to cocaine, heroin, or methamphetamine, or a derivative of cocaine, heroin, or methamphetamine, as evidenced by any appropriate tests of the mother or child.
- Upon admission to a hospital for delivery of the child, the mother tested positive for cocaine, heroin, or methamphetamine, or a derivative of cocaine, heroin, or methamphetamine, as evidenced by any appropriate toxicology test.
- Drug treatment is made available to the mother and the mother refuses the recommended level of drug treatment or does not successfully complete the recommended level of drug treatment.

Massachusetts**Mass. Gen. Laws Ann. Ch. 119, § 51A (LexisNexis through 2009 Sess.)**

A mandated reporter who, in his or her professional capacity, has reasonable cause to believe that a child is suffering physical or emotional injury resulting from. . . physical dependence upon an addictive drug at birth, shall immediately communicate with the Department of Children and Families orally and, within 48 hours, shall file a written report with the department detailing the suspected abuse or neglect.

Michigan**Mich. Stat. Ann. § 722.623a (LexisNexis through 4-13-09)**

A person who is required to report suspected child abuse or neglect and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body shall report to the department in the same manner as required of other reports.

A report is not required under this section if the person knows that the alcohol, controlled substance, or metabolite, or the child's symptoms, are the result of medical treatment administered to the newborn infant or his or her mother.

Minnesota**Minn. Stat. Ann. § 609.378 (LexisNexis through 3-3-09)**

A parent, legal guardian, or caregiver who endangers the child's person or health by knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with the intent to manufacture, or possessing a controlled substance, as defined in statute, is guilty of child endangerment and may be sentenced to imprisonment for not more than 1 year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than 5 years or to payment of a fine of not more than \$10,000, or both.

Minn. Stat. Ann. § 626.5562 (LexisNexis through 3-3-09)

A physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within 8 hours after delivery to determine whether there is evidence that she has ingested a controlled substance, if the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose. If the test results are positive, the physician shall report the results. A negative test result does not eliminate the obligation to report if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose.

A physician shall administer to each newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance if the physician has reason to believe, based on a medical assessment of the mother or the infant, that the mother used a controlled substance for a nonmedical purpose during the pregnancy. If the test results are positive, the physician shall report the results as neglect. A negative test result does not eliminate the obligation to report if other medical evidence of prenatal exposure to a controlled substance is present.

Physicians shall report to the Department of Health the results of tests performed. A report shall be made on the Certificate of Live Birth Medical Supplement or the Report of Fetal Death Medical Supplement filed on or after February 1, 1991.

Minn. Stat. Ann. § 626.5561, Subd. 1-2 (LexisNexis through 3-3-09)

A mandated reporter shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive. Any person may make a voluntary report if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.

An oral report shall be made immediately by telephone or otherwise. An oral report made by a mandated reporter shall be followed within 72 hours, exclusive of weekends and holidays, by a report in writing to the local welfare agency. Any report shall be of sufficient content to identify the pregnant woman, the nature and extent of the use, if known, and the name and address of the reporter.

Upon receipt of a report, the local welfare agency shall immediately conduct an appropriate assessment and offer services indicated under the circumstances. Services offered may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. The local welfare agency also may take any appropriate action under chapter 253B, including seeking an emergency admission under § 253B.05. The local welfare agency shall seek an emergency admission under § 253B.05 if the pregnant woman refuses recommended voluntary services or fails recommended treatment.

Minn. Stat. Ann. § 626.556, Subd. 2(f), (g) (LexisNexis through 3-3-09)

"Neglect" includes:

- Prenatal exposure to a controlled substance, used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child at birth, or medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance
- Chronic and severe use of alcohol or a controlled substance by a parent or person responsible for the care of the child that adversely affects the child's basic needs and safety

"Physical abuse" includes purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances that were not prescribed for the child by a practitioner, in order to control or punish the child; or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances.

Mississippi

Miss. Code Ann. § 41-29-313 (LexisNexis through 2008 1st Ex. Sess.)

It is unlawful for any person to knowingly or intentionally:

- Purchase, possess, transfer, manufacture, attempt to manufacture, or distribute any two or more of the listed precursor chemicals or drugs in any amount with the intent to unlawfully manufacture a controlled substance
- Purchase, possess, transfer, manufacture, attempt to manufacture, or distribute any two or more of the listed precursor chemicals or drugs in any amount, knowing, or under circumstances where one reasonably should know, that the listed precursor chemical or drug will be used to unlawfully manufacture a controlled substance

Any person who violates this subsection, upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed 30 years and shall be fined not less than \$5,000 nor more than \$1,000,000, or both fine and imprisonment.

Any person who violates the provisions of this section with children under age 18 present may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

Missouri

Mo. Ann. Stat. § 191.737(1)-(3), (5) (LexisNexis through 2008 2nd Reg. Sess.)

Notwithstanding the physician-patient privilege, any physician or health-care provider may refer to the Department of Health families in which children may have been exposed to alcohol or a controlled substance as defined by law as evidenced by:

- Medical documentation of signs and symptoms consistent with controlled substances or alcohol exposure in the child at birth
- Results of a confirmed toxicology test for controlled substances performed at birth on the mother or the child
- A written assessment made or approved by a physician, health-care provider, or the Division of Family Services that documents the child as being at risk of abuse or neglect

Nothing in this section shall preclude a physician or other mandated reporter from reporting abuse or neglect of a child as required pursuant to the provisions of the reporting laws.

Upon notification, the Department of Health and Senior Services shall offer service coordination services to the family. The department shall coordinate social services, health care, mental health services, and needed education and rehabilitation services. Service coordination services shall be initiated within 72 hours of notification. The Department of Health and Senior Services shall notify the Department of Social Services and the Department of Mental Health within 72 hours of initial notification.

Referral and associated documentation provided for in this section shall be confidential and shall not be used in any criminal prosecution.

Mo. Ann. Stat. § 568.045 (LexisNexis through 2008 2nd Reg. Sess.)

A person commits the crime of endangering the welfare of a child in the first degree if:

- The person knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child younger than age 17.
- Such person enlists the aid, either through payment or coercion, of a person younger than age 17 to unlawfully manufacture, compound, produce, prepare, sell, transport, test, or analyze amphetamine or methamphetamine or any of their analogues, or to obtain any material used to manufacture, compound, produce, prepare, test, or analyze amphetamine or methamphetamine or any of their analogues.
- Such person, in the presence of a person younger than age 17 or in a residence where a person younger than age 17 resides, unlawfully manufactures, or attempts to manufacture, compounds, produces, prepares, sells, transports, tests, or analyzes amphetamine or methamphetamine or any of their analogues.

Endangering the welfare of a child in the first degree is a Class C felony unless the offense is committed as part of a ritual or ceremony, or except on a second or subsequent offense, in which case the crime is a Class B felony.

Montana**Mont. Code Ann. § 41-3-102(7)(b) (LexisNexis through 4-14-09)**

“Child abuse or neglect” includes exposing a child to the criminal distribution of dangerous drugs, as prohibited by § 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by § 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by § 45-9-132.

Mont. Code Ann. § 45-9-132(3) (LexisNexis through 4-14-09)

A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed \$50,000, be imprisoned in a State prison for a term not to exceed 50 years, or both, if the operation of an unlawful clandestine laboratory or any phase of the operation:

- Created a substantial risk of death of or serious bodily injury to another
- Took place within 500 feet of a residence, business, church, or school
- Took place in the presence of a person younger than age 18

Mont. Code Ann. § 45-5-622(3), (5)(b) (LexisNexis through 4-14-09)

A person, whether or not the person is supervising the welfare of a child younger than age 18, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:

- Produces or manufactures methamphetamine or attempts to produce or manufacture methamphetamine
- Possesses any material, compound, mixture, or preparation that contains any combination of the items listed in § 45-9-107 with intent to manufacture methamphetamine
- Causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine or be exposed to or have contact with methamphetamine paraphernalia

A person convicted under the subsection above is guilty of a felony and shall be imprisoned in the State prison for a term not to exceed 5 years and may be fined an amount not to exceed \$10,000, or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed \$25,000 or be imprisoned for a term not to exceed 10 years, or both. Prosecution or conviction of a violation of this subsection does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

Nebraska**Neb. Rev. Stat. § 28-457 (LexisNexis through 2008 Spec. Sess.)**

Any person who knowingly or intentionally causes or permits a child or vulnerable adult to inhale or have contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second or subsequent conviction under this subsection, any person so offending is guilty of a Class IV felony.

Any person who knowingly or intentionally causes or permits a child or vulnerable adult to ingest methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second or subsequent conviction under this subsection, any person so offending shall be guilty of a Class IIIA felony.

Any child or vulnerable adult who resides with a person violating the subsections above shall be taken into protective custody as provided in the Adult Protective Services Act or the Nebraska Juvenile Code.

Any person who violates the subsections above and a child or vulnerable adult actually suffers serious bodily injury by ingestion of, inhalation of, or contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class IIIA felony unless the ingestion, inhalation, or contact results in the death of the child or vulnerable adult, in which case the person is guilty of a Class IB felony.

Nevada**Nev. Rev. Stat. § 432B.220(3) (LexisNexis through 1-30-09)**

Any person who is a mandated reporter who delivers or provides medical services to a newborn infant and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that the newborn infant has been affected by prenatal illegal substance abuse or has withdrawal symptoms resulting from prenatal drug exposure shall, as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the newborn infant is so affected or has such symptoms, notify an agency that provides child welfare services of the condition of the infant and refer each person who is responsible for the welfare of the infant to an agency that provides child welfare services for appropriate counseling, training, or other services. A notification and referral to an agency that provides child welfare services shall not be construed to require prosecution for any illegal action.

New Hampshire**N.H. Rev. Stat. § 639-A:2 (LexisNexis through 2009 Sess.)**

No person shall knowingly engage in any of the following activities in the presence of a child or incapacitated adult; in the residence of a child or an incapacitated adult; in a building, structure, conveyance, or outdoor location where a child or incapacitated adult might reasonably be expected to be present; within any drug-free school zone; in a room offered to the public for overnight accommodations; or in any multiple unit residential building:

- Manufacturing or attempting to manufacture methamphetamine
- Storing any chemical substance
- Storing or disposing of any methamphetamine waste products
- Storing or disposing of any methamphetamine paraphernalia

No person shall knowingly cause or permit a child or incapacitated adult to inhale, be exposed to, have contact with, or ingest methamphetamine, a chemical substance, or methamphetamine paraphernalia.

No person shall, with the intent to engage in any prohibited conduct under the first paragraph above, knowingly cause or permit any child or incapacitated adult to buy or otherwise obtain methamphetamine paraphernalia.

N.H. Rev. Stat. § 639-A:3 (LexisNexis through 2009 Sess.)

A person convicted of an offense under § 639-A:2 shall be guilty of a felony and, notwithstanding § 651:2, may be sentenced to imprisonment for not more than 5 years or a fine of up to \$10,000, or both.

A prosecution or conviction under this chapter is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

New Jersey

This issue is not addressed in the statutes reviewed.

New Mexico**N.M. Ann. Stat. § 30-6-1(I)-(J) (LexisNexis through N.M. 2009 Legis. Serv., Ch. 259)**

Evidence that demonstrates that a child has been knowingly, intentionally, or negligently allowed to enter or remain in a motor vehicle, building, or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed *prima facie* evidence of abuse of the child.

Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed *prima facie* evidence of abuse of the child.

New York**N.Y. Soc. Serv. Law § 371(4-a) (LexisNexis through 4-27-09)**

“Neglected child” means a child younger than age 18, whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his or her parent or other person legally responsible for his or her care to exercise a minimum degree of care...by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he or she loses self-control of his or her actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he or she loses self-control of his or her actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child’s physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired.

North Carolina**N.C. Stat. Ann. § 15A-1340.16 (LexisNexis through 2008 Reg. Sess.)**

[When imposing a sentence upon conviction of a crime,] the court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court.

An aggravated or mitigated sentence is allowed if the jury or the court finds that aggravating factors exist or the court finds that mitigating factors exist, the court may depart from the presumptive range of sentences specified in § 15A-1340.17(c)(2). If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in [the chart of punishments in] § 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, the court may impose a sentence that is permitted by the mitigated range described in § 15A-1340.17(c)(3). Aggravating factors include:

- The offense involved the sale or delivery of a controlled substance to a minor.
- The offense is the manufacture of methamphetamine and was committed where a person under age 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its byproducts, or its waste.

North Dakota**N.D. Cent. Code § 19-03.1-22.2 (LexisNexis through 2007 Sess.)**

Unless a greater penalty is otherwise provided by law, a person who knowingly or intentionally causes or permits a child or vulnerable adult to be exposed to, to ingest or inhale, or to have contact with a controlled substance, chemical substance, or drug paraphernalia is guilty of a Class C felony.

Unless a greater penalty is otherwise provided by law, a person who violates the subsection above, and a child or vulnerable adult actually suffers bodily injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia, is guilty of a Class B felony.

If the exposure, ingestion, inhalation, or contact results in the death of the child or vulnerable adult, the person is guilty of a Class A felony.

N.D. Code § 27-20-02(8) (LexisNexis through N.D. 2009 Legis. Serv., H.B. 1094)

“Deprived child” means a child who:

- Was subject to prenatal exposure to chronic and severe use of alcohol or any controlled substance in a manner not lawfully prescribed by a practitioner
- Is present in an environment subjecting the child to exposure to a controlled substance, chemical substance, or drug paraphernalia as prohibited by § 19-03.1-22.2

Northern Mariana Islands

This issue is not addressed in the statutes reviewed.

Ohio**Ohio Rev. Code Ann. § 2919.22(B)(6), (E)(3) (LexisNexis through 4-1-09)**

No person shall...allow the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, of any act in violation of § 2925.04 [prohibiting the cultivation of marijuana or the manufacture of a controlled substance] or § 2925.041 [prohibiting the possession of any of the chemicals used in the manufacture of a controlled substance] when the person knows that the act is occurring, whether or not any person is prosecuted or convicted of the violation that is the basis of the violation of this section.

If the drug involved [in an offense described above] is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

- If the violation is third degree felony, there shall be a mandatory prison term that is not less than 2 years.
 - If the offender previously has been convicted of or pleaded guilty to a third degree felony, there shall be a mandatory prison term that is not less than 5 years.
 - If the violation is a second degree felony, there shall be a mandatory prison term that is not less than 3 years.
 - If the offender previously has been convicted of or pleaded guilty to a second degree felony, there shall be a mandatory prison term that is not less than 5 years.
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Oklahoma**Okla. Stat. Ann. Tit. 10, § 7103(A)(2) (LexisNexis through Okla. 2009 Legis. Serv., H.B. 1738)**

Every physician, surgeon, or other health-care professional, including doctors of medicine, licensed osteopathic physicians, residents, and interns, attending the birth of a child who tests positive for alcohol or a controlled dangerous substance shall promptly report the matter to the Department of Human Services.

Oregon**Or. Rev. Stat. § 419B.005 (LexisNexis through 2007 Reg. Sess.)**

"Abuse" means:

- Permitting a person younger than age 18 to enter or remain in or upon premises where methamphetamines are being manufactured
 - Unlawful exposure to a controlled substance that subjects a child to a substantial risk of harm to the child's health or safety
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Pennsylvania

Pa. Stat. Tit. 35, § 780-113 (LexisNexis through 2008 Reg. Sess.)

The following acts and the causing thereof within the Commonwealth are hereby prohibited: The unlawful manufacture of methamphetamine or phencyclidine or their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation:

- In a structure where any child under age 18 is present
- Where the manufacturing of methamphetamine or phencyclidine causes any child under age 18 to suffer bodily injury

Any person who violates the first subsection above is guilty of a felony of the third degree and upon conviction thereof shall be sentenced to not more than 7 years in prison and a fine of not more than \$25,000, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

Any person who violates the second subsection above is guilty of a felony of the second degree and upon conviction thereof shall be sentenced to not more than 10 years in prison and a fine of not more than \$50,000, or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

Puerto Rico

This issue is not addressed in the statutes reviewed.

Rhode Island

R.I. Gen. Laws § 40-11-2(1) (LexisNexis through 2008 Sess.)

“Abused and/or neglected child” means a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare fails to provide the child with a minimum degree of care or proper supervision or guardianship because of his or her unwillingness or inability to do so by situations or conditions such as, but not limited to, social problems, mental incompetency, or the use of a drug, drugs, or alcohol to the extent that the parent or other person responsible for the child’s welfare loses his or her ability or is unwilling to properly care for the child.

South Carolina

S.C. Code Ann. § 63-7-1660(F)(1) (LexisNexis through 2008 Reg. Sess.)

It is presumed that a newborn is an abused or neglected child as defined in § 63-7-20 and that the child cannot be protected from further harm without being removed from the custody of the mother upon proof that:

- A blood or urine test of the child at birth or a blood or urine test of the mother at birth shows the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite is the result of medical treatment administered to the mother of the infant or the infant.
- The child has a medical diagnosis of fetal alcohol syndrome.
- A blood or urine test of another child of the mother or a blood or urine test of the mother at the birth of another child showed the presence of any amount of a controlled substance or a metabolite of a controlled substance unless the presence of the substance or the metabolite was the result of medical treatment administered to the mother of the infant or the infant.
- Another child of the mother has a medical diagnosis of fetal alcohol syndrome.

S.C. Code Ann. § 44-53-378 (LexisNexis through 2008 Reg. Sess.)

It is unlawful for a person who is age 18 or older to:

- Either directly or by extraction from natural substances, or independently by means of chemical processes, or both, unlawfully manufacture amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of its isomers in the presence of a minor child
- Knowingly permit a child to be in an environment where a person is selling, offering for sale, or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture, or attempt to manufacture amphetamine or methamphetamine
- Knowingly permit a child to be in an environment where drug paraphernalia or volatile, toxic, or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture amphetamine or methamphetamine

A person who violates any of the above subsections, upon conviction, for a first offense must be imprisoned not more than 5 years or fined not more than \$5,000, or both. Upon conviction for a second or subsequent offense, the person must be imprisoned not more than 10 years or fined not more than \$10,000, or both.

South Dakota**S.D. Codified Laws § 26-8A-2(9) (LexisNexis through 4-15-09)**

"Abused or neglected child" includes a child:

- Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by statute
- Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance

Tennessee**Tenn. Code Ann. § 37-1-102(21)(D) (LexisNexis through 2008 Reg. Sess.)**

"Severe child abuse" means knowingly allowing a child to be present within a structure where the act of creating methamphetamine is occurring.

Texas**Tex. Health & Safety Code § 468.103 (LexisNexis through 2007 Reg. Sess.)**

To the extent that reporting does not interfere with an ongoing criminal investigation, the Department of Public Safety of the State of Texas and each local law enforcement agency shall report to the department on discovering the presence of a child in a location where methamphetamine is manufactured.

The department shall maintain a record of reports received under this section and shall include in the record information regarding actions taken by the department to ensure the child's safety and well-being.

Tex. Health & Safety Code § 468.102 (LexisNexis through 2007 Reg. Sess.)

The department shall establish a drug-endangered child initiative aimed at protecting children who are exposed to methamphetamine or to chemicals and other hazardous materials used in the illicit manufacture of methamphetamine.

Tex. Fam. Code Ann. § 261.001 (LexisNexis through 2007 Reg. Sess.)

“Abuse” includes the following acts or omissions by a person:

- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning
- The current use by a person of a controlled substance as defined by the Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child
- Causing, expressly permitting, or encouraging a child to use a controlled substance

“Born addicted to alcohol or a controlled substance” means a child:

- Who is born to a mother who, during the pregnancy, used a controlled substance, as defined by the Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol
- Who, after birth as a result of the mother’s use of the controlled substance or alcohol:
 - » Experiences observable withdrawal from the alcohol or controlled substance
 - » Exhibits observable or harmful effects in the child’s physical appearance or functioning
 - » Exhibits the demonstrable presence of alcohol or a controlled substance in the child’s bodily fluids

Utah**Utah Code Ann. § 76-5-112.5 (LexisNexis through Utah 2009 Legis. Serv., H.B. 26)**

“Chemical substance” means:

- A substance intended to be used as a precursor in the manufacture of a controlled substance
- A substance intended to be used in the manufacture of a controlled substance
- Any fumes or by-product resulting from the manufacture of a controlled substance

“Exposed to” means that the child:

- Is able to access or view an unlawfully possessed controlled substance or chemical substance
- Has the reasonable capacity to access drug paraphernalia
- Is able to smell an order produced during, or as a result of, the manufacture or production of a controlled substance

Unless a greater penalty is otherwise provided by law:

- A person is guilty of a felony of the third degree if the person knowingly or intentionally causes or permits a child to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia.
- A person is guilty of a felony of the second degree if:
 - » The person engages in the conduct described above.
 - » As a result of that conduct, a child suffers bodily injury, substantial bodily injury, or serious bodily injury.
- A person is guilty of a felony of the first degree if the person engages in the conduct described above, and as a result of that conduct, a child dies.

It is an affirmative defense to a violation of this section that the controlled substance was obtained by lawful prescription and is used or possessed by the person to whom it was lawfully prescribed.

The penalties described in this section are separate from, and in addition to, the penalties and enhancements described in Title 59, Occupations and Professions.

Utah Code Ann. § 62A-4a-404 (LexisNexis through 10-31-08)

When any person, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome or fetal drug dependency, he or she shall report that determination to the Division of Child and Family Services as soon as possible.

Vermont

This issue is not addressed in the statutes reviewed.

Virgin Islands**V.I. Ann. Code Tit. 14, § 504 (LexisNexis through 2008 Reg. Sess.)**

Any person who is responsible for the safety or welfare of a child, including, but not limited to, a child's parent, stepparent, guardian, schoolteacher, or baby sitter, who neglects a child, or who knowingly, recklessly, or negligently causes or allows a child to suffer physical, mental, or emotional injury, or who knowingly, recklessly, or negligently deprives a child of any of the basic necessities of life, shall be punished by a fine of not less than \$500, or by imprisonment of not more than 15 years, or both.

V.I. Ann. Code Tit. 14, § 503 (LexisNexis through 2008 Reg. Sess.)

"Neglect" means to place a child or allow a child to be placed in a situation that a reasonable person should know is dangerous to the child's health or welfare, and includes, but is not limited to, leaving a child in the care of any person known to use, possess, or sell illegal drugs or abuse alcohol.

Virginia**Va. Code Ann. § 63.2-1509(B) (LexisNexis through 2008 Sp. Sess.)**

For purposes of the reporting law, "reason to suspect that a child is abused or neglected" shall include:

- A finding made by an attending physician within 7 days of a child's birth that the results of a blood or urine test conducted within 48 hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician
- A finding by an attending physician made within 48 hours of a child's birth that the child was born dependent on a controlled substance that was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms
- A diagnosis by an attending physician made within 7 days of a child's birth that the child has an illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to *in utero* exposure to a controlled substance that was not prescribed by a physician for the mother or the child
- A diagnosis by an attending physician made within 7 days of a child's birth that the child has fetal alcohol syndrome attributable to *in utero* exposure to alcohol

When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

Va. Code Ann. § 18.2-248.02 (LexisNexis through 2008 Sp. Sess.)

Any person age 18 or older who maintains a custodial relationship over a child younger than age 18, including, but not limited to, a parent, stepparent, grandparent, stepgrandparent, or who stands *in loco parentis* with respect to such child, and who knowingly allows that child to be present in the same dwelling, apartment, unit of a hotel, shed, or vehicle during the manufacture or attempted manufacture of methamphetamine, as prohibited § 18.2-248(C1), is guilty of a felony punishable by imprisonment for not less than 10 years nor more than 40 years. This penalty shall be in addition to and served consecutively with any other sentence.

Washington**Wash. Rev. Code Ann. § 26.44.200 (LexisNexis through 12-18-08)**

A law enforcement agency in the course of investigating an allegation under § 69.50.401(a) relating to manufacture of methamphetamine, or an allegation under § 69.50.440 relating to possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, that discovers a child present at the site, shall contact the department immediately.

Wash. Rev. Code Ann. § 26.44.170(1) (LexisNexis through 12-18-08)

When, as a result of a report of alleged child abuse or neglect, an investigation is made that includes an in-person contact with the person who is alleged to have committed the abuse or neglect, there shall be a determination of whether it is probable that the use of alcohol or controlled substances is a contributing factor to the alleged abuse or neglect.

Wash. Rev. Code Ann. § 9A.42.100 (LexisNexis through 12-18-08)

A person is guilty of the crime of endangerment with a controlled substance if the person knowingly or intentionally permits a dependent child or dependent adult to be exposed to, ingest, inhale, or have contact with methamphetamine or ephedrine, pseudoephedrine, or anhydrous ammonia, including their salts, isomers, and salts of isomers, that are being used in the manufacture of methamphetamine, including its salts, isomers, and salts of isomers. Endangerment with a controlled substance is a Class B felony.

Wash. Rev. Code Ann. § 9.94A.605 (LexisNexis through 12-18-08)

The court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation, in a criminal case in which:

- The defendant has been convicted of manufacture of a controlled substance under § 69.50.401 relating to manufacture of methamphetamine; or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in § 69.50.440.
- There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person younger than age 18 was present in or upon the premises of manufacture.

West Virginia**W.Va. Code § 60A-10-12 (LexisNexis through 2008 2nd Ex. Sess.)**

Any person 18 years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction, shall be confined in a State correctional facility for not less than 1 year nor more than 5 years, fined not more than \$10,000, or both.

Notwithstanding the provisions above, the penalty for a violation of said subsection when the child suffers serious bodily injury shall be confinement in a State correctional facility for not less than 3 years nor more than 15 years, a fine of not more than \$25,000, or both.

Wisconsin**Wis. Stat. Ann. § 48.205 (LexisNexis through 5-5-09)**

A child may be held [in physical custody] if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

An adult expectant mother of an unborn child may be held [in physical custody] if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

Wis. Stat. Ann. § 48.02(1) (LexisNexis through 5-5-09)

"Abuse," other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

- When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcoholic beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree
- Manufacturing methamphetamine in violation of § 961.41(1)(e) under any of the following circumstances:
 - » With a child physically present during the manufacture
 - » In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home
 - » Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child

Wyoming**Wyo. Stat. Ann. § 6-4-405 (LexisNexis through 2008 Reg. Sess.)**

Notwithstanding § 6-4-403(b)(iv), no person shall knowingly and willfully cause or permit any child to:

- Absorb, inhale, or otherwise ingest any amount of methamphetamine
- Remain in a room, dwelling, or vehicle where the person knows methamphetamine is being manufactured or sold
- Enter and remain in a room, dwelling, or vehicle that the person knows is being used to manufacture or store methamphetamine, or the hazardous waste created by the manufacture of methamphetamine

No person having the care or custody of a child shall knowingly and willfully permit the child to remain in a room, dwelling, or vehicle where that person knows that methamphetamine is possessed, stored, or ingested.

Any person who violates any of the provisions of the subsections above is guilty of endangering a child punishable by imprisonment for not more than 5 years, a fine of not more than \$5,000, or both.

Wyo. Stat. Ann. § 6-4-403(b) (LexisNexis through 20058 Reg. Sess.)

No person shall knowingly sell, give, or otherwise furnish a child any drug prohibited by law without a physician's prescription.

A person violating this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, a fine of not more than \$1,000, or both. A person convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not more than 5 years, a fine of not more than \$5,000, or both.