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OF ABUSED CHILDREN

When Parental Substance Use Endangers Children: Defining Imminent Risk for Child Protection Systems

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Executive Summary

The federal Child Abuse Prevention and Treatment Act provides a minimum definition of child maltreatment that includes imminent risk of serious harm. Yet, in practice, many state and county child welfare jurisdictions impose narrower standards that demand observable injury or preclude parental substance use and prenatal exposure as sufficient grounds for action. These practices weaken the protective intent of federal law and endanger children. This policy misalignment occurs amid a measurable escalation in preventable child harm linked to caregiver substance use.

The failure to appropriately respond when substance abuse imposes imminent risk of serious harm reflects a conceptual and operational misunderstanding of addiction. Substance use disorders—particularly involving high-risk drugs such as fentanyl, heroin, and methamphetamines—are characterized by impaired functioning, compulsive use, and an inability to meet caregiving obligations. Individuals with untreated disorders are frequently intoxicated, in withdrawal, or preoccupied with substance use; conditions incompatible with safe parenting of young children. Nevertheless, prevailing “harm reduction” approaches by child protection agencies rely on mitigation strategies (e.g., lockboxes, Narcan) that do not address caregiver incapacity and thus leave children unsafe.

A more coherent policy framework aligns child protection standards with established public safety principles and federal law, both of which recognize impairment itself as sufficient grounds for intervention. Analogous to prohibitions on impaired driving, child protection systems should not require a demonstrable injury before acting on foreseeable danger where substance abuse threatens the safety of young children.

Accordingly, this analysis supports the adoption of a clear, evidence-based federal standard defining imminent risk in cases of parental substance use. We recommend federal guidance that sets a clear baseline, including a presumption of imminent risk when:

1. Caregivers are intoxicated while providing direct care to young children,
2. There is no sober caregiver present,
3. Children experience environmental exposure to illicit substances,
4. Resources are diverted from housing, food, or other basic necessities to purchase substances,
5. Children are exposed to illicit drugs and alcohol prenatally or through breastfeeding.

Under these circumstances, safety plans that rely on the impaired caregiver to shield children from the impacts of their substance use are wholly inadequate. Establishing such a baseline would restore fidelity to CAPTA's mandate, enable earlier intervention, and reduce preventable morbidity and mortality among vulnerable children.

CAPTA's Legal Mandate

Under an imminent risk standard, Child Protective Services (CPS) agencies can intervene before a child experiences serious harm due to caregiver substance use. The Child Abuse Prevention and Treatment Act (CAPTA) defines child abuse and neglect as “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation (including sexual abuse as determined under section 111), or an act or failure to act which presents an imminent risk of serious harm.”¹ States can expand upon this definition but should not be “less protective” than the CAPTA definition.²

States retain the authority to clarify or amend their own statutes, regulations, and administrative policies governing child protection in order to ensure that circumstances involving parental substance use that create an imminent risk of serious harm are appropriately recognized and addressed. In practice, however, many states provide narrower protections to children by (1) requiring that serious harm has already occurred as a condition for intervention; and (2) predetermining that prenatal substance exposure and parents’ abuse of dangerous substances cannot be the basis for “reasonable suspicion” by mandatory reporters of child abuse and neglect.

Escalation of Preventable Harms to Children

For decades, caregiver substance use has been a major contributor to child maltreatment, child protective services (CPS) involvement, foster care placement,³ and child impairment and mortality in the United States.⁴ Although many states are unable to produce reliable and accurate annual child maltreatment fatality statistics,⁵ reporting from three states that have drastically reduced CPS interventions suggests that harms due to substance use may be escalating.

In the first 3 months of 2025, Washington state identified 22 child maltreatment fatalities or near fatalities in families with past-year CPS contact: of the 16 with completed reviews, 14 involved substance use and 11 involved families with six or more prior reports to CPS.⁶

In the first 8 months of 2025, Oregon recorded 21 child maltreatment fatalities involving children with past-year CPS contact – a substantial increase from prior years – of which 90% involved parents with substance abuse histories.⁷

In Minnesota, child maltreatment fatalities increased 53% from 2019 to 2023, with over 40% of fatalities involving parental substance abuse and over 20% involving children poisoned by fentanyl.⁸

Troubling national statistics provide further cause for concern:

Pediatric Poisonings: Between 2016 and 2023, the number of young children with reported exposure to heroin, fentanyl, and synthetic non-pharmaceutical opioids increased by 512%.⁹ In 2023 alone, 2,840 children under the age of 6 were reported to Poison Control due to opioid exposure, including 670 who received Narcan.¹⁰ Cannabis, opioid, and cocaine poisonings of young children have also increased significantly since 2019,¹¹ many of which are never reported to CPS.¹²

Parental Loss: Between 2011 and 2021, over 300,000 children lost a parent to drug overdose.¹³

Sleep-related Deaths: Sleep-related infant deaths are rising.¹⁴ At least 1 in 4 sleep-related infant deaths involve prenatal substance exposure and/or an impaired caregiver,¹⁵ totaling an estimated 875 deaths annually.¹⁶



The Human Toll of Ignoring Imminent Risk



CPS agencies routinely assert the absence of abuse or neglect — such that there is no cause for intervention without the parent's cooperation — where common sense dictates that imminent risk of serious harm is present. The following examples demonstrate the tremendous cost of this false understanding:

Washington: a nine-year-old boy is living in a tent encampment with his fentanyl-addicted parents; he doesn't attend school or see a doctor, appears ill and malnourished, and is forced to wait outside in the dark while his mother exchanges sex for drugs. The agency asserts that it will not intervene because drug use and homelessness are "not neglect."¹⁷

New York: an infant was deemed "not impacted" by her parents' substance use, even though she was born premature and "jittery" with cocaine in her system and her parents arrived at the hospital for the delivery intoxicated. Despite evidence of her parents' continued substance use while caring for her, she received no protective intervention before her drug ingestion death at age 1.¹⁸

New Mexico: Elijah died of suffocation at 7 months. Elijah, his young siblings, another child, and the mother all tested positive for methamphetamine at the time of his death. The CPS agency kept the surviving children in the care of the mother under an in-home "safety plan." Despite repeated efforts by the mother to evade drug testing of herself or her young children (both under age 3), the CPS agency stated that the deceased infant could not justify removal of the siblings because "that case was closed."¹⁹

Connecticut: Marcello Meadows went home with his parents after testing positive for cocaine and opioids at birth and experiencing failure to thrive. The CPS "safety plan" tasked the father with being the "sober caregiver" despite his history of drug use and no confirmation of current sobriety. CPS did no drug testing for several months. The mother then repeatedly tested positive for multiple substances, but no further action was taken. Marcello died of drug ingestion at the age of 1.²⁰

Arizona: Jody Jackson died of fentanyl ingestion at the age of 1. Jody had been born positive for substances, resulting in substantiated allegations of neglect at birth. The mother had a prior report related to substance abuse. The child protection agency determined that Jody was "safe with her mother with a safety plan in place."²¹ As part of the safety plan, the family was referred to services – but did not participate. The agency closed the case 7 months before Jody's death.

Illinois: an infant was born positive for cocaine at 28 weeks gestation, requiring treatment for a brain bleed and ongoing use of a g-tube for feeding. Despite substantial medical vulnerability for the infant and the mother's improbable claims that she had never used cocaine before and was unaware of her pregnancy prior to the child's birth, the agency did not file a court petition for services or placement. The family fled within a week and was unable to be located prior to the infant's death due to abuse and neglect six months later.²²

Missouri: 5-year-old Grayson O'Connor died after falling out of a 17th story window. Two weeks earlier, the child protection agency had closed his case related to his mother's abusive and erratic behavior while intoxicated because the mother had not made progress in services and was unwilling to participate.²³

Misapplication of Harm Reduction

Agencies' failure to act on behalf of those children is consistent with a "harm reduction" philosophy increasingly embedded in states' practices. Although labeled "harm reduction," this philosophy does not require the removal of the primary source of harm—ongoing illicit drug use in a child's home. In fact, harm reduction precludes a requirement of abstinence from drug use and discourages the monitoring or mandated treatment of drug use.²⁴ Instead, harm reduction seeks to make the presence of inherently dangerous substances marginally safer, an approach that may reduce adult overdose deaths but leaves children exposed to unacceptable risk. Harm reduction strategies in practice in multiple states include: the provision of lockboxes for drugs, providing Narcan to parents to resuscitate their infants and toddlers following accidental ingestions, and encouraging the immediate cleaning or disposal of drug use supplies (e.g., foils, syringes).²⁵

Federal agencies or organizations receiving federal funding encourage the use of harm reduction strategies in child welfare. For example, the National Center on Substance Abuse and Child Welfare discourages the use of drug testing to inform whether it is safe to retain young children in the home: "The punitive use of drug testing can inhibit recovery and prove harmful to families."²⁶

Other facets of harm reduction philosophy are that people who use drugs should be trusted to know what is best for them and that their decision to use drugs is not inherently problematic. In line with this worldview, multiple jurisdictions now explicitly state that CPS will not investigate solely on the basis of prenatal substance exposure or parental substance abuse, regardless of the substance involved, unless there are additional reasons to suspect abuse or neglect.²⁷

"A categorical refusal to investigate or intervene when there is evidence of active untreated substance use disorder by a parent responsible for the care of young children is inconsistent with a reasonable and minimalist interpretation of imminent risk of serious harm."



Misunderstanding the Reality of Addiction

Although it is reasonable for CPS to have discretion to screen out low-risk substance use referrals (where there is no indication of impairment), it is equally crucial that CPS recognize that a parent using fentanyl or other highly dangerous drugs is extraordinarily unlikely to be a recreational user²⁸ who can manage their drug use alongside caregiving responsibilities.

Indeed, most pregnant or parenting adults who use drugs like heroin and methamphetamines have an active substance use disorder.²⁹

Diagnostic criteria³⁰ for substance use disorder include the following symptom categories:

Interference with functioning: Substance use results in failure to fulfill major role obligations.

Prioritization of use: Substantial time and resources are expended using, procuring, or recovering from substances.

Inability to control use: Substance use persists despite negative consequences to self or others.

Crucially, a person with an untreated substance use disorder typically uses substances daily, sometimes multiple times per day, and the resulting intoxication from each use can last for several hours.

Consequently, a large portion of each day is spent intoxicated, impaired, or experiencing withdrawal: It is highly probable that the affected parent is in one of these conditions while directly responsible for children's care and safety. Thus, a categorical refusal to investigate or intervene when there is evidence of active untreated substance use disorder by a parent responsible for the care of young children is inconsistent with a reasonable and minimalist interpretation of imminent risk of serious harm.



The Public Safety Precedent

“Federal law recognizes that certain acts in the mere presence of children are sufficient to rise to criminal conduct without a showing of actual harm to a child. Our Proposal simply asks HHS to align child welfare guidance with the standard of risk already established by Congress in federal criminal law.”

State court precedents generally affirm that parental substance use alone cannot establish imminent risk, but that past and current use of illicit or dangerous substances warrants strong consideration when determining parents’ capacity to provide care for young children.³¹ Moreover, there is substantial public safety precedent establishing that impairment caused by substance use constitutes imminent risk. Consider, for example, laws prohibiting drunk driving.

Assumption of Danger: We do not wait for a drunk driver to hit a pedestrian before intervening. We arrest the driver based on the imminent risk their impairment creates.

Zero Tolerance for Incapacity: We do not ask if the driver is “good otherwise.” We recognize that chemically impaired judgment renders safety impossible.

Risk monitoring: A drunk driver is typically prevented from driving or is monitored for a period of time. They are not presumed “safe” once their immediate intoxication has abated.

If it is illegal to drive while impaired or intoxicated by substances, why are our public health and CPS agencies messaging that one can safely parent in this condition?

Consistency with Federal Law

Federal law recognizes that certain acts in the mere presence of children are sufficient to rise to criminal conduct without a showing of actual harm to a child. Our proposal simply asks HHS to align child welfare guidance with the standard of risk already established by Congress in federal criminal law.

1. The “1,000 Feet” Standard (21 U.S.C. § 860) Federal law imposes severe penalties for possessing, with the intent to distribute, drugs within 1,000 feet of a school. It is incoherent to treat drugs near a school as a crime while treating drugs in the home as a private family matter.

2. The Methamphetamine Precedent (21 U.S.C. § 860a) Federal statute explicitly imposes consecutive sentences for manufacturing or distributing methamphetamine on “premises in which an individual who is under the age of 18 years is present or resides.” This statute codifies the principle that the environment of drug manufacturing and distribution is inherently incompatible with child safety.



Federal Recommendation



“An appropriate and timely response to imminent risk provides parents with the best chance to address problematic substance use before they or their children experience serious harm.”

HHS/ACF should issue guidance to states on when parental substance use could reasonably constitute an imminent risk of serious harm to a child under the minimal (baseline) definition of child abuse and neglect in the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101):

We recommend the following language be adopted as the baseline for imminent risk of serious harm involving caregiver substance abuse. A presumption of imminent risk exists when:

- 1. Impaired Supervision:** A caregiver is intoxicated or incapacitated while providing direct care to, or responsible for, a child under the age of 6.
- 2. Absent Caregiver:** A child under 6 years of age is left without a sober caregiver while their caregiver procures or uses substances.
- 3. Environmental Exposure:** A child is present during the consumption, manufacturing, or sale of illicit substances; is in an environment where illicit fentanyl or methamphetamine are stored; or tests positive for illicit drugs due to contaminated surfaces or accidental ingestion.
- 4. Resource Diversion:** A child is deprived of minimally adequate food, shelter, or medical care due to the diversion of household income to purchase substances.
- 5. Prenatal Exposure:** A newborn was exposed to alcohol or illicit drugs in utero and the biological mother would be their sole or primary caregiver, except when the mother is actively engaged in treatment.
- 6. Breastfeeding:** A child is exposed to illicit drugs or unprescribed opioids via breastfeeding.
- 7. Inappropriate Safety Plans:** A parent with an active, untreated substance use disorder cannot be the executor of a safety plan intended to protect a child from that very disorder. Lockboxes, Narcan, and other efforts focused on preventing accidental overdoses among children do not, in themselves, constitute a safety plan as they fail to address the harmful effects of substance abuse on parenting.

Conclusion

Efforts to prohibit CPS contact or intervention in cases of untreated parental addiction may merely delay intervention until maltreatment escalates,³² imposing substantial social and economic costs. An appropriate and timely response to imminent risk provides parents with the best chance to address problematic substance use before they or their children experience serious harm.

End Notes

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