Quality Improvement Center
Collaborative Community Court Teams

NCSC
National Center for State Courts

# PLANS OF SAFE CARE

## AN ISSUE BRIEF FOR JUDICIAL OFFICERS

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The Comprehensive Addiction Act of 2016 (P.L. 114-198) amended the Child Abuse Prevention and Treatment Act (CAPTA) related to infants affected by prenatal substance exposure and their families. Requirements were added to emphasize that Plans of Safe Care (POSC) address the health needs of "infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder", and the substance use disorder (SUD) treatment needs of the family or caregiver[1]. The legislation removed the term "illegal" when referring to substance use that could result in an infant affected by prenatal drug exposure, and requires a certification by the Governor that the state is implementing policies and procedures to address the needs of infants identified as being affected by the above conditions.

## PURPOSE

Judicial officers hear a broad variety of dependency matters from a unique vantage point. This often requires insight and education in areas beyond the law such as substance use, mental health, and infant health and development. This briefing paper is intended to assist judicial officers presiding over collaborative community court teams by providing information to assist judicial officers assure the implementation of POSC in accordance with federal and state statutes and regulations. Additional information on POSC can be found in A Planning Guide: Steps to Support a Comprehensive Approach to Plans of Safe Care[2] from the National Center on Substance Abuse and Child Welfare (NCSACW).

Judicial officers serve two critical and distinct roles in relation to POSC:

- **Decision-maker** at the individual family level, ensuring timely and appropriate service provision, and that the family's needs are met

[1] Child Abuse Prevention and Treatment Act of 2016, Pub. L. 114-198, 130 Stat. 729, codified as amended at 42 U.S.C §§ 5106a.

[2] National Center on Substance Abuse and Child Welfare (NCSACW). (2018). A Planning Guide: Steps to Support a Comprehensive Approach to Plans of Safe Care. Retrieved from https://www.cffutures.org/files/fdc/A-Planning-Guide_-Steps-to-Support-a-Comprehensive-Approach-to-Plans-of-Safe-Care-3.21.18-final.pdf

- **Judicial leader and convener** at the community and systems level, bringing together community partners to improve systems and ensure access to necessary services for families in need of assistance

By understanding POSC at both levels, judicial officers can more effectively engage in collaboration to implement POSC to improve safety, permanency, well-being, and family recovery outcomes for infants and their families or caregivers. Knowledge of federal, state and local statutes will inform judicial officers on how current statutes and definitions will affect decision making on POSC at the individual family level.

## OVERVIEW OF CARA AMENDMENTS TO CAPTA

Understanding of the CARA amendments to CAPTA is fundamental for judicial officers to understand POSC. These amendments require that each state must have "policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder…."[3]

These amendments regarding infants affected by prenatal substance exposure:

- Further clarified the population as "born with and affected by substance use, withdrawal symptoms or Fetal Alcohol Spectrum Disorder," specifically removing "illegal"
- Required the Plan of Safe Care to include needs of both the infant and family or caregiver
- Specified data to be reported by states
- Specified increased monitoring and oversight for States to ensure that POSC are implemented and that families have access to appropriate services

The Children's Bureau in the Administration on Children, Youth and Families issued guidance to states in the form of a program instruction on the CARA amendments to CAPTA, indicating state decisions and flexibility in implementing the statute. For example, each state has the flexibility to define the phrase "infants born and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure,"[4] so long as the state's policies and procedures address the needs of infants born affected by both legal and illegal substance use.

The identification of an infant affected by substance abuse or withdrawal symptoms or Fetal Alcohol Spectrum Disorders (FASD) also triggers the CAPTA-required notification to the Child Protective Services (CPS) agency and the development, implementation, and management of the POSC. When a health care provider notifies the CPS agency of an affected infant, intake staff determine how to respond, based on state-specific law, policy, and protocols.

[3] Child Abuse Prevention and Treatment Act of 2016, Pub. L. 114-198, 130 Stat. 729, codified as amended at 42 U.S.C §§ 5106a.

[4] Administration for Children and Families (2017), Guidance on amendments made to Child Abuse Prevention and Treatment Act (CAPTA) by Public Law 114-198, the Comprehensive Addiction and Recovery Act of 2016. page 3. ACYF-CB-PI-17-02.

## WITHIN THE STATE'S POLICIES AND PROCEDURES

- ✓ Does the state have a statute that includes some aspect of prenatal exposure in the statutory definitions of child maltreatment?
- ✓ Does the state have a statute that requires mandated reporters involved in the delivery and care of an infant "affected by substance abuse, withdrawal symptoms or Fetal Alcohol Spectrum Disorder" to notify their local CPS agency? Does the state have a statute that defines who is a mandated reporter?
- ✓ Are there state statutes in place that identify roles and responsibilities for development and implementation of POSC?
- ✓ How does child welfare currently respond to notifications or reports of infants affected by prenatal substance exposure?

Judicial officers also need to be aware that an approach to POSC begins with a review of existing state statutes, policies, and procedures to focus on needed changes to comply with CAPTA and the CARA amendments. These state policies will guide implementation teams developing procedures and protocols for POSC. State statutory definitions are particularly important because CAPTA does not define the term "affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder," and leaves the states to define the group of affected infants.

For all states, CAPTA requires the state's governor to assure that the state has the policies and procedures for health care providers involved in the delivery and care of an infant "affected by substance abuse, withdrawal symptoms or Fetal Alcohol Spectrum Disorder" to notify their local CPS agency, and consensus on the definitions by state and local agencies, private practitioners, hospitals and other stakeholders is important to ensure provision of the full spectrum of interventions and support.

Development of POSC in the prenatal period is voluntary because CAPTA requirements do not apply to families during this time and child welfare services do not take jurisdiction prior to an infant's birth. A substance use disorder treatment agency or healthcare agency might develop an initial POSC during the prenatal period and communicate with the child welfare agency about the plan before or at the infant's birth.

For additional guidance, see Step 2: Know your State Systems and Step 3: Determine who receives a Plan of Safe Care.

## EACH PLAN OF SAFE CARE SHOULD:

- ✓ Address the health and substance use disorder treatment needs of the infant and affected caregiver and others in the family.

The January 17, 2017 Program Instruction from the Administration for Children and Families states:

> "while CAPTA does not specifically define a "plan of safe care," CARA amended the CAPTA state plan requirement at 106(b)(2)(B)(iii)(1) to require that a plan of safe care address the health and substance use disorder treatment needs of the infant and affected family or caregiver. We want to highlight that this change means that a plan of safe care must now address not only the immediate safety needs of the affected infant, but also the health and substance use disorder treatment needs of the affected family or caregiver. Consistent with good casework practice, the plan should be developed with input from the parents or other caregivers, as well as any collaborating professional partners and agencies involved in caring for the infant and family."[5]

In practice, a POSC may be defined as a document that inventories and directs services and supports to ensure the safety and well-being of an infant affected by substance abuse, withdrawal or FASD, including services for the infant and their family/caregiver. Judicial leadership can play a key role in developing and strengthening the partnerships the make-up these service and support inventories. There is no uniform national or state template for a POSC that fits all urban, rural, and suburban settings or meets the needs of all parents and children, but the NCSACW has provided technical assistance guidance recommending the components of a POSC include: Infant's Medical Care; Mother's Medical Care; Mother's Substance Use and Mental Health Needs; and Family/Caregiver History and Services Needs.

Judicial officers are more effective when they understand that POSC goes beyond the immediate safety factors of an infant and addresses their ongoing health, development, and well-being as well as the treatment and other services needs of their family/caregiver. POSC may incorporate services and supports for diverse, longer-term needs, including physical and mental health, substance use treatment, parenting education, infant developmental screening, and other family needs. Ideally, POSC are:

1. *Interdisciplinary* across health and social service agencies
2. Based on the results of a *comprehensive, multidisciplinary assessment*
3. *Family-focused* to meet the needs of each family member as well as overall family functioning and well-being
4. Completed, when possible, in the prenatal period to facilitate *early engagement* of parent(s) and communication among provider
5. *Easily accessible* to relevant agencies
6. Grounded in *evidence-informed practices*

For additional guidance, see Step 7: Assess Needs to Guide Individual Plans of Safe Care.

**IDENTIFY THE SERVICE(S):**

- ✓ Does the treatment align with the needs of the family?

[5] Administration for Children and Families (2017), Guidance on amendments made to Child Abuse Prevention and Treatment Act (CAPTA) by Public Law 114-198, the Comprehensive Addiction and Recovery Act of 2016. page 3. ACYF-CB-PI-17-02.

- ✓ Are all treatment providers working as a team and sharing information?
- ✓ Is there random testing for adherence to substance use disorder treatment plans and court requirements?

Judicial officers benefit greatly from knowing the difference between standard CPS safety plans, substance use disorder treatment plans, mental health treatment plans and hospital discharge plans. CPS safety plans focus on the immediate safety of a child or infant, while POSC focus not only on the safety of the child or infant but also the well-being of children by addressing the health and substance use disorder treatment needs of the child and affected family and/or caregiver. Substance use disorder treatment plans and mental health treatment plans focus on treatment of adults, while POCS may include the treatment and broad services of the whole family including the child and parent-child dyad. Hospital discharge plans may focus on the health and well-being of the infant, while POSC include the ongoing health and development of the infant as well as the educational and substance use disorder treatment needs of the family/caregiver who will be caring for the infant. By understanding how POSC differ from other care plans, judicial officers can more effectively inquire regarding the establishment, existence or effectiveness of a POSC in place for the infant and family/caregiver.

Since there is no uniform template for POSC that fits in all settings or meets all the needs of children and parents, the domains included in Step 5: Define Plans of Safe Care can be used when considering what elements to include in a POSC beyond those already included in standard child welfare safety plans.

Current child welfare safety plans, substance use treatment plans, and hospital discharge plans can strengthen POSC. CPS safety plan processes used for assessment tracks in differential response programs and those used for investigations of child abuse or neglect allegations can be useful elements of a comprehensive POSC. Providing the full range of currently-available prevention and intervention services along with additional services to meet the family or caregiver's on-going service needs, benefit POSC. A well developed and implemented POSC may prevent the removal of an infant from his/her family or provide a good opportunity for quick reunification if initial placement is away from the birth mother and/or father. A strong POSC benefits an infant and their caregiver by addressing their treatment needs, regardless of immediate child placement decisions.

For additional guidance see Step 5: Define Plans of Safe Care and Step 7: Assess Needs to Guide Individual Plans of Safe Care.

## THE JUDICIAL OFFICER SERVES AS DECISION-MAKER AND CONVENER

As decision makers at the family level and convener at the community and systems level, the judicial officer has a unique opportunity to oversee and effectuate the goals of CARA/CAPTA and the implementation of POSC.

At the individual family level, the requirement that courts find that agencies make reasonable efforts to both prevent removal and to achieve permanency goals is an important judicial tool. A Plan of Safe Care that addresses the health and safety needs of infants, and provides access to health services, including substance use disorder treatment, for the parent or caregiver, can either mitigate the need for some children to be removed from their families, or provide the interventions and supports needed to achieve reunification. As with the court's role in determining if reasonable

efforts have been made to prevent removals or achieve timely permanency, judicial officers are in a position to require the POSC be implemented according to CAPTA. Timely permanency goals are achieved in part by the availability and access to effective, family-centered community services.

At the community and systems level, as a community leader and convener, with a unique perspective on the needs of families, judicial officers can promote the development of these services where they are lacking. This begins with a comprehensive understanding of appropriate and effective services in the community. While the judicial officer cannot choose the services or service providers, the judicial officer can use reasonable efforts findings to mandate access to services which are evidence-based and effective. By requiring communication between providers, families and the courts, the judicial officer can not only highlight the needs of families in the community, but also maximize the efficient use of community resources. Below are immediate actions judicial officers can take at the individual family level and community/systems level to begin addressing the needs of infants and families:

**Individual Family Level**

- For families with SUDs, ask "is there a plan of safe care for the infant and family/caregiver?"
- In instances where the infant is placed in foster care, ask about the frequency of family time and visitation that promotes mother/infant bonding
- Ensure reasonable efforts are met
- Ensure access to timely and effective family-centered treatment services and how they are coordinated with maternal and infant healthcare.

**Systems and Community Level**

- Develop collaborative partnerships with maternal and infant health care providers, hospitals, child welfare, SUD treatment providers (including medication assisted treatment), the court, and early intervention providers
- Encourage a prevention mindset within the courtroom and with partners to help prevent removals
- Work with partners to develop accurate, updated inventories of services available to parents and children
- Promote data utilization by working with partners to count children of parent with SUDs and infants affected by prenatal substance exposure, and develop performance measures to measure success
- Encourage and provide guidance to collaborative court teams to develop practice, communication, and information-sharing procedures to coordinate care and services for children and families among family services agencies
- Advocate for the use of Title IV-E funding to keep children with their parent in residential substance use disorder treatment

- Ensure the use of training and resources for all collaborative partners on the needs of infants, young children, and their families/caregivers affected by substance use disorders and prenatal substance exposure
- Ensure high quality legal representation for parents and children

## CONCLUSION

The committee report on the 2003 legislation (H.R. 14) requiring the development of Plans of Safe Care for infants affected by prenatal drug exposure stated the requirement was intended to identify infants at risk of child abuse and neglect so appropriate services can be delivered to the infant and mother to provide for the safety of the child. The authors of this bill called for:

> "the development of a safe plan of care for the infant under which consideration may be given to providing the mother with health services (including mental health services), social services, parenting services, and substance abuse prevention and treatment counseling, and to providing the infant with referral to the statewide early intervention program funded under part C of the Individuals with Disabilities Education Act for an evaluation for the need for services provided under part C of such Act." [6]

The opioid epidemic has resulted in more children being removed from their home due to parental substance use disorder, with children under age 1 accounting for the highest percentage of removals.[7] Judicial officers have a critical role in assuring that timely and effective services are delivered to infants and their families or caregivers. Comprehensive and coordinated Plans of Safe Care can mitigate the need to remove some children from their families and prevent the recurrence of child maltreatment.

**For more information or to request technical assistance, please contact:**


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[6] H.R. 14, Keeping Children and Families Safe Act of 2003. Retrieved from https://www.congress.gov/bill/108th-congress/house-bill/14/text?q=%7B%22search%22%3A%5B%22HR+14+keeping+children+and+families+safe+act+2003%22%5D%7D&resultIndex=4&overview=open#content
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[7] U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2017). The Adoption and Foster Care Analysis and Reporting System (AFCARS) Data Set. Retrieved from https://www.ndacan.cornell.edu/datasets/dataset-details.cfm?ID=225

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