

# Call to Jury Duty:

## Law and Ethics of Alcohol Use in Pregnancy

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Building FASD State Systems

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# Objectives

Considering a case from *Law and Order SVU*:

- Consider optimal strategies for responding to women who use alcohol in pregnancy
- Recognize the impact of attitudes about women who use alcohol in pregnancy
- Recognize resources for adapting this exercise to train others about FASD

Find our template to give your own presentation  
at [FASDsoutheast.org/presentations.html](http://FASDsoutheast.org/presentations.html) (PPTs)

# “Jury Deliberation” Maternal Alcohol Use in Pregnancy\*

Your Name

Your Contact Information

Date

\*Presentation developed, in whole or in part, by Carey Szetela, Ph.D., Meharry Medical College, Southeastern Fetal Alcohol Syndrome Regional Training Center

# Speaker Instructions

- This session offers guided exploration of attitudes, risks and benefits of judicial approaches toward women who expose a fetus to the risks of FASD
- Students will be divided into random small groups to deliberate as juries, followed by jury verdicts/reports and whole-group discussion
- Uses the *Law and Order SVU* DVD “Choice” (season 5, available at amazon.com approx \$45.)
- Time: 2 hours preferred, can be 1 hour
- Class format: Small groups or up to 200 students
- Some notes on slides are added on “notes pages”

# Materials Required

- PPT system
- Copy of PPT handouts\*
- Reading: Maternal decision making, ethics, and the law. ACOG Committee Opinion No. 321. ACOG. Obstet Gynecol 2005;106:1127-37.
- Law and Order DVD “Choice” (used with permission for educational purposes)
- DVD player or computer projection with adequate speaker connection (test the audio first)

# Objectives (for *Your* Presentation)

- What is FASD?
- Prevalence of Alcohol Use in Pregnancy
- Law and Order
- Jury Deliberation and Discussion
- What Can You Do?

What non-prescription drug of abuse is most damaging to fetal brain development?

**Of all the substances of abuse (including cocaine, heroin and marijuana), alcohol produces by far the most serious neurobehavioral effects in the fetus.**

The most common preventable developmental disability

Institute of Medicine, Report on Fetal Alcohol Syndrome Diagnosis, Epidemiology, Prevention and Treatment, 1996.

# Fetal Alcohol Syndrome (FAS)

A diagnosis with standardized criteria

- Must meet thresholds for wide-ranging effects
  - Facial
  - Growth
  - Brain / Central Nervous System

Image shown  
at presentation

# What are Fetal Alcohol Spectrum Disorders?

- Range of effects that can occur in a person whose mother drank alcohol during pregnancy – can be mild to severe
  - Physical
  - Mental, Learning Disabilities
  - Behavioral
- FASD is not a diagnosis
- Includes FAS (a diagnosis)



# How are People Affected?

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at presentation

- Function below IQ level
- May Show Poor Judgment
- Problems with
  - Social Interactions
  - Behavior
  - Regulation of Emotions
  - Motor Skills
- May have Physical Abnormalities

Photo courtesy of University of Louisville FASD Clinic and CDC Southeast FAS RTC, used with permission

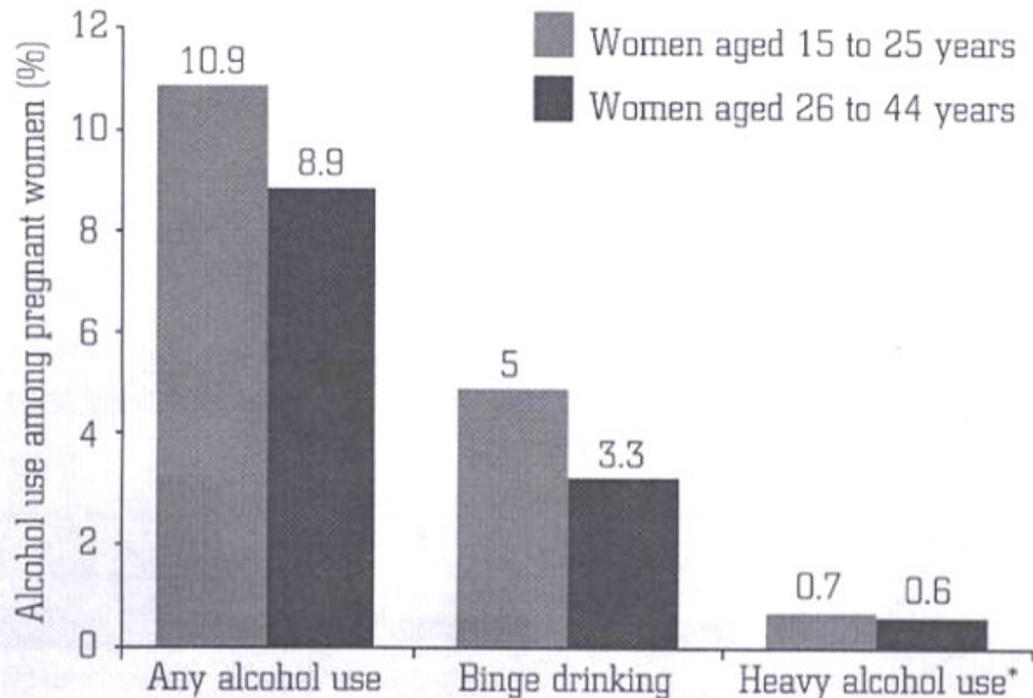
# FAS/D Prevalence

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at presentation

- FAS Prevalence rates (CDC) range from 1/667 to 1/5000 live births, with higher prevalence in specific subpopulations
- FASD has higher prevalence (approx 3x)
- Other research shows FASD at 1/100 live births
- Persons often do not receive a diagnosis

# Prevalence of Alcohol Use in PG

**Figure.** Past month alcohol use in pregnant women by age, 2002 and 2003.<sup>6</sup> Pregnant women ages 15 to 25 years old reported slightly higher rates of all alcohol consumption than women older than 25 years.



\*Heavy alcohol use was defined as 5 or more drinks on the same occasion on each of 5 or more days in the past 30 days; heavy alcohol users were also binge drinkers.

ACOG: Drinking And Reproductive Health Tool Kit, 2006.

# Understanding FASD

Once (our child) was identified as having FAS it changed our whole world. What we did is, we had to say, we have spent 16 years talking about what (our child) cannot do, and we're not going to do that anymore.... What we're going to do is... think of what (our child) is good at... and we're going to nurture those things.

– Kathy Mitchell, parent of a child with FAS

Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Recovering Hope: Mothers speak out about Fetal Alcohol Spectrum Disorders. 206. at <http://www.ncadi.samhsa.gov>.

# Law and Order

- Married couple in process of separating
- Wife (Jennifer) is pregnant, found to drink in her early pregnancy
- She seeks abortion; husband seeks injunction against abortion to raise the child himself; court finds for wife's right to seek abortion
- Jennifer wants baby but continues to drink
- Court order given for mandatory outpatient treatment but she violates the order
- Now court order sought for mandatory inpatient treatment

**Your task as a jury will be: Should Jennifer be sentenced to mandatory inpatient treatment for her alcohol use during pregnancy?**

# Mock Jury Break-Out Groups

- Break-out groups
  - 5 people each work well
- Groups deliberate for 10-15 minutes
- Leader resumes “whole group” discussion
  - Ask each group to report their verdict with one reason supporting their decision
  - After these reports, lead a discussion based on audience impressions, encouraging reflection and dispelling myths
  - Encourage diverse feedback and respectful dialogue from the audience

# Legal Reporting Requirements: Risk to Fetus or Child

Health providers may have obligations to report reasonable suspicion of risks to a child or fetus.

If you know your state regulations about reporting requirements, create your own slides to address these with your audience.

# ACOG Opinion 321, 2005

## **Six Objections to Punitive and Coercive Legal Approaches to Maternal Decision Making**

Maternal decision making, ethics, and the law. ACOG Committee Opinion No. 321. ACOG. Obstet Gynecol 2005;106:1127-37.

1. Coercive and punitive legal approaches to pregnant women who refuse medical advice fail to recognize that all competent adults are entitled to informed consent and bodily integrity.

A fundamental tenet of contemporary medical ethics is the requirement for informed consent, including the right of competent adults to refuse medical intervention.

In the United States, even in the case of two completely separate individuals, constitutional law and common law have historically recognized the rights of all adults, pregnant or not, to informed consent and bodily integrity, *regardless of the impact of that person's decision on others.*

2. Court-ordered interventions in cases of informed refusal, as well as punishment of PG women for their behavior that may put a fetus at risk, neglect the fact that medical knowledge and predictions of outcomes in obstetrics have limitations.

Women almost always are best situated to understand the importance of risks and benefits in the context of their own values, circumstances, and concerns.

Fallibility – present to various degrees in all medical encounters – is sufficiently high in obstetric decision making to warrant wariness in imposing legal coercion.

3. Coercive and punitive policies treat medical problems such as addiction and psychiatric illness as if they were moral failings.

Although once considered a sign of moral weakness, addiction is now, according to evidence-based medicine, considered a disease – a compulsive disorder requiring medical attention.

Studies overwhelmingly show that pregnant drug users are very concerned about the consequences of their drug use for their fetuses and are particularly eager to obtain treatment once they find out they are pregnant.

4. Coercive and punitive policies are potentially counterproductive in that they are likely to discourage prenatal care and successful treatment, adversely affect infant mortality rates, and undermine the physician-patient relationship

Various studies have suggested that attempts to criminalize pregnant women's behavior discourage women from seeking prenatal care.

Threats and incarceration have been ineffective in reducing the incidence of alcohol and drug abuse among pregnant women, and removing children from the home of an addicted mother may subject them to worse risks in the foster care system.

5. Coercive and punitive policies directed toward pregnant women unjustly single out the most vulnerable women.

Decisions about detection and management of substance abuse in pregnancy are fraught with bias, unfairly burdening the most vulnerable despite the fact that addiction occurs consistently across race and socioeconomic status.

In the landmark case of *Ferguson v City of Charleston*, which involved selective screening and arrest of pregnant women who tested positive for drugs, 29 of 30 women arrested were African American.

## 6. Coercive and punitive policies create the potential for criminalization of many types of otherwise legal maternal behavior

Because many maternal behaviors are associated with adverse pregnancy outcome, these policies could result in a society in which simply being a woman of reproductive potential could put an individual at risk for criminal prosecution. (i.e., poorly controlled diabetes, periconceptional folic acid deficiency, obesity, and prenatal exposure to certain medications)

# What Can You Do?

- Know Local Policies, Laws
- Educate
  - Self: Know risks, screening, intervention options
  - Health Providers: Respectful Prevention Messages, Screening, Intervention
  - Society: Raise and discuss issues
- Promote alcohol / drug screening
- Stamp out ‘just an occasional drink’ message for PG
- Recognize own biases
- Listen and Empathize with at-risk women

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at presentation

# Questions and Comments ??

# Information and Treatment Resources

- Southeastern Regional FASD Training Center  
Tel: 615 327-5525 Web: [FASDsoutheast.org](http://FASDsoutheast.org) (with links to other FASD Regional Training Centers)
- NOFAS (National Organization on FAS)  
Tel: 202-785-4585 Web: <http://www.nofas.org>
- Local Alcohol and Drug Treatment Resources:  
Web: <http://findtreatment.samhsa.gov>
- FASD Center for Excellence  
Web: <http://www.fasdcenter.samhsa.gov/>
- Centers for Disease Control and Prevention, FASD Home Page: <http://www.CDC.gov/fasd>

# The verdict is in...

Finish by showing the end of the *Law and Order SVU* episode.